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Maine Indian Tribal-State Commission

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Maine Indian Tribal-State Commission and Dieffenbacher-Krall, John, "Final Report Of the Tribal-State Work Group. 2008" (2008).
Indian Tribal-State Commission Documents. Paper 18.
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**STATE OF MAINE
123RD LEGISLATURE
SECOND REGULAR SESSION**

**Final Report
Of the Tribal-State Work Group
Created by
Resolve 2007, Chapter 142, 123rd Maine State Legislature
Resolve, To Continue the Tribal-State Work Group**

January 2008

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Executive Summary

The 18 members of the Tribal-State Work Group met five times unanimously agreeing to eight specific recommendations, seven of which comprise suggested changes to the Maine Implementing Act (MIA) and the Micmac Settlement Act (see appendix one model legislation An Act To Amend the Maine Implementing Act and the Micmac Settlement Act). The Work Group agreed to the following eight recommendations:

1. Change the heading for Title 30 from “Municipalities and Counties” to “Municipalities, Counties and Indian Tribes”
2. Amend the law to achieve jurisdictional parity for all Tribes
3. Institute mandatory mediation by the Maine Indian Tribal-State Commission (MITSC) for tribal-state disputes prior to going to court with deadlines and requiring all parties to act in good faith
4. Require mandatory meaningful consultation with Tribes prior to any legislative, regulatory or policy change by the State that may have an impact on the Tribes
5. MITSC to continue studying and analyzing potential changes to the Act and may make formal recommendations to amend the Act to the Judiciary Committee every two years, or more often as it deems appropriate, with MITSC having the explicit authority to introduce such legislation
6. The Maine Tribes not be subject to the Freedom of Access laws (FOA) for any purpose. The Work Group said this should be included under the internal tribal matters language, not the municipality status language, in the MIA.
7. Include a new statement of intent for the settlement acts that specifies that the documents are to be viewed as dynamic, flexible, and to be regularly revisited. In addition, the Aroostook Band of Micmacs should be added to MITSC with a corresponding additional seat(s) for the State.
8. Task the Executive Branch of State Government to invite the Tribes to discuss unresolved issues and sovereignty

In addition to these eight recommendations, the Tribal-State Work Group also made several important findings:

1. Contrary to what some people have asserted for the past two decades, the negotiators themselves designed MIA to be a dynamic, living agreement with the flexibility to make adjustments in the jurisdiction and powers of each signatory and in the relationship between the Tribes and the State. This is supported by the statutory language of the Maine Indian Claims Settlement Act (MICSA).
2. The negotiators of the settlement agreement never intended to equate the Passamaquoddy Tribe and the Penobscot Indian Nation with Maine municipalities. The negotiators viewed the powers of self-government confirmed in MIA as more akin to home rule powers defining a specific bundle of rights that would be recognized by the State and the Tribes.

3. Despite the intentions of the settlement act negotiators that the agreements enhance Tribal Governments, Wabanaki living conditions, and Tribal culture, gains in these areas have been modest and lag far behind other population groups in Maine.
4. The Wabanaki's principal motivation for agreeing to MIA, MICSA, and the Aroostook Band of Micmacs Settlement Act (ABMSA) was to regain the freedom to control their lives and governments that they had lost due to European settlement in Maine and Maine becoming a state.
5. The Houlton Band of Maliseet Indians and Aroostook Band of Micmacs have different concerns about the interpretation and implementation of their settlement acts than the highly disputed internal tribal matters and municipality status in §6206 of MIA that principally concern the Passamaquoddy Tribe and Penobscot Nation.
6. The Houlton Band of Maliseets and Aroostook Band of Micmacs desire some accommodation to enjoy sustenance hunting rights now only practically available to the Passamaquoddy Tribe and Penobscot Nation.

Rationale for the Creation of the Tribal-State Work Group

A major focus of the May 8, 2006 Assembly of Governor and Chiefs addressed the disputed interpretations involving the Maine Implementing Act (MIA). The State of Maine and the Wabanaki Tribes have extensively litigated certain provisions of MIA straining tribal-state relations. All the parties express dissatisfaction with the outcome of litigation. Governor Baldacci stated at the May 8, 2006 Assembly:

While we are doing what we are doing, we need to create a new foundation for us and future chiefs and governors. I don't want to go to court. I want to get the relationship to a point without fear of what people are doing, why they are doing it.

The leaders assembled in Veazie May 8, 2006 agreed to create a process to examine possible changes to MIA. Governor Baldacci offered to issue an executive order creating a group consisting of Tribal and State representatives. He issued the executive order July 10, 2006 (see appendix two).

The Tribal-State Work Group created under Governor Baldacci's executive order met three times during the fall of 2006. It issued a final report, Report of the Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act, on December 6, 2006. Among the Work Group's recommendations included its support for continuing the Group as a legislative body. Representative Dick Blanchard sponsored LD 1263, Resolve, To Continue the Tribal-State Work Group. It passed the Maine Legislature in June 2007, and it was signed into law by Governor Baldacci (Resolve 2007, Chapter 142, 123rd Maine Legislature see appendix three).

Tribal-State Work Group

Resolve 2007, Chapter 142 directs the Tribal-State Work Group (TSWG) to:

examine the issues identified in the framework document prepared for the Assembly of the Governors and Chiefs held May 8, 2006, the minutes for that meeting, Tribal-Maine Issues: Issues That Have Been Litigated or Are in Litigation, and Tribal-Maine Issues: Macro Issues prepared for the May 31, 2006 review of AN ACT to Implement the Maine Indian Claims Settlement, the federal Maine Indian Claims Settlement Act of 1980 and other settlement acts pertaining to the Wabanaki Tribes for the meeting held at Indian Island May 31, 2006, the minutes for the May 31, 2006 meeting and the final report of the tribal-state work group created by Executive Order 19 FY 06/07;

Section three of the Resolve specifies that the Work Group consists of 17 members:

1. Two members of the Senate, appointed by the President of the Senate;
2. Six members of the House of Representatives, appointed by the Speaker of the House;

3. One representative of the Passamaquoddy Tribe at Indian Township appointed by the Governor;
4. One representative of the Passamaquoddy Tribe at Pleasant Point appointed by the Governor;
5. One representative of the Penobscot Nation appointed by the Chief;
6. One representative of the Houlton Band of Maliseet Indians appointed by the Chief;
7. One representative of the Aroostook Band of Micmacs appointed by the Chief;
8. The Passamaquoddy Tribal Representative to be appointed by the Joint Tribal Council of the Passamaquoddy Tribe;
9. The Penobscot Nation Tribal Representative to be appointed by the Chief;
10. One member appointed by the Governor of the State of Maine;
11. One representative of the Maine Indian Tribal-State Commission.

Penobscot Nation Chief Kirk Francis named Tribal Elders Butch Phillips and James Sappier as his Tribe's two representatives to the TSWG. Chief Phillips-Doyle also appointed himself. The final TSWG membership totaled 18 people (see appendix four).

The original version of Chapter 142 required the Tribal-State Work Group to issue a report by December 5, 2007 encompassing its findings, recommendations, and suggested legislation to the Second Regular Session of the 123rd Legislature, the Governor of the State of Maine, the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe at Indian Township, the Passamaquoddy Tribe at Pleasant Point and the Penobscot Nation. Finding it could not meet the December 5, 2007 reporting deadline, the TSWG through Senator Libby Mitchell approached the Legislative Council to submit an after-deadline bill to extend the reporting date from December 5 to January 20, 2008. Senator Mitchell gained approval from the Legislative Council for her bill. It became LD 1970, Resolve, To Extend to January 20, 2008 the Reporting Deadline for the Tribal-State Work Group. The Joint Standing Committee on Judiciary voted unanimously to support the extension legislation, and final enactment was pending as this report was being completed.

Tribal-State Work Group Findings

The Tribal-State Work Group unanimously supported changes to the Maine Implementing Act (30 MRSA §6201 - §6214) and Micmac Settlement Act (30 MRSA §7201 - §7207) in seven areas.

1. Change the heading for Title 30 from “Municipalities and Counties” to “Municipalities, Counties and Indian Tribes”

The Wabanaki Tribes are not municipalities or counties. They are Tribal Governments formally recognized by the United States and the State of Maine. The Wabanaki representatives on the TSWG expressed their desire to have the heading for Title 30 accurately reflect all the types of governments addressed in it. State appointees to the TSWG concurred.

2. Amend the law to achieve jurisdictional parity for all Tribes

The Maine Implementing Act delineates a jurisdictional relationship for the Passamaquoddy Tribe and Penobscot Indian Nation with the State of Maine different than the one specified for the Houlton Band of Maliseets. The Aroostook Band of Micmacs have an entirely separate settlement act with the State and their own agreement with the United States (Aroostook Band of Micmacs Settlement Act (ABMSA)). As the TSWG process progressed, a consensus emerged that the Maliseets and Micmacs deserved jurisdictional parity with the Passamaquoddy Tribe and Penobscot Nation.

3. Institute mandatory mediation by MITSC for tribal-state disputes prior to going to court with deadlines and requiring all parties to act in good faith

As noted in the Rationale for the Creation of the Tribal-State Work Group, a major impetus for the creation of the body was to explore the resolution of issues before litigation involving MIA or the other settlement acts. The Tribes and State have spent large sums of money on litigation. Besides the high costs associated with it, litigation accentuates tensions between the parties and strains tribal-state relations. It creates an adversarial relationship when all the parties express a desire to have cooperative and mutually beneficial relations.

Work Group members heard from MITSC Chair Paul Bisulca that MITSC has no statutory authority to compel parties with disputes involving MIA to submit such disputes to the Commission for possible resolution. Discussion ensued on how to compel parties with disputes involving MIA to come before MITSC before going to court. Mike Mahoney said a parallel provision exists in the Maine Rules of Civil Procedure, 16(b), Pretrial Order and Trial Management Conference. He explained a mediator has to certify to the court that a good faith effort has been made by the parties to settle prior to allowing the case to go to trial. Work Group members liked the idea of requiring MITSC mediation of disputes prior to going to court. It appears as recommendation number three.

4. Require mandatory meaningful consultation with Tribes prior to any legislative, regulatory or policy change by the State that may have an impact on the Tribes

A recurring Tribal criticism of how the State interacts with the five Tribal Governments is the failure to uniformly consult with them whenever legislative, regulatory or policy changes under consideration may affect them. A Federal executive order exists (Executive Order 13175--Consultation and Coordination With Indian Tribal Governments) directing all Federal departments and agencies to undertake such consultation with the Tribes. State representatives on the TSWG thought a parallel requirement for State actions that may affect the Tribes was reasonable.

5. MITSC to continue studying and analyzing potential changes to the Act and may make formal recommendations to the amend the Act to the Judiciary Committee every two years, or more often as it deems appropriate, with MITSC having the power to introduce such legislation

The TSWG agreed that MITSC's advisory role as an authority on ways to strengthen tribal-state relations and MIA should be enhanced. The TSWG received information that MITSC recommendations have often gone unheeded. If MITSC perceives a need for statutory changes to MIA, it must rely on the Governor of Maine or a member of the Maine Legislature to introduce such legislation. To remedy this problem, the TSWG recommends that MITSC continue analyzing and studying changes to MIA and be given explicit authority to introduce legislation to implement its proposed resolution to any observed deficiencies in MIA.

6. The Maine Tribes should not be subject to the Freedom of Access laws (FOA) for any purpose. In MIA, the TSWG said this should be included under the internal tribal matters language, not the municipality status language.

The applicability of the Maine Freedom of Access Act to the Tribes has been litigated twice this decade. The first case involved a FOAA request made by three paper corporations during the State's application to obtain sole licensing authority under the Clean Water Act from the Federal Government. In 2001, the Maine Supreme Court ruled largely against the Passamaquoddy Tribe and Penobscot Nation (Great Northern Paper Inc. et. al. v. Penobscot Nation, 2001 ME 68). The Maine Supreme Court issued this decision despite MITSC twice unanimously asserting it strongly believed that in the particular circumstances the FOAA was not applicable to the two Tribes.

Two years ago Maine Superior Court Justice Thomas Humphrey ruled that the Pleasant Point Reservation acted as a business corporation, not a municipality, in negotiating a land lease with an Oklahoma firm, denying a Bangor Daily News and Quoddy Tides request for Passamaquoddy documents. It was later affirmed by the Maine Supreme Court (Winifred B. French Corporation et. al. v. Pleasant Point Passamaquoddy Reservation, 2006 ME 53). Despite the legal victory, the Passamaquoddy Tribe did not greet the decision with enthusiasm as it prevailed only because the Court viewed it as acting in a business capacity, not in its Tribal Government function.

TSWG members unanimously felt that the FOA laws do not apply to the Tribes. Tribal Governments are not municipalities, counties, or parts of State Government. Tribes must have the freedom to deliberate and conduct governmental relations as they see appropriate without outside parties requesting documents that intrude on the core of self-government activities.

7. That the statement of intent for the settlement acts specify that the documents are to be viewed as dynamic, flexible, and to be regularly revisited. In addition, that the Aroostook Band of Micmacs should be added to MITSC with a corresponding additional seat(s) for the State.

Since the enactment of MIA, something of a myth has emerged that the agreement was “carved in stone” and never intended to be amended. This notion is wrong and is neither supported by the statutory language of MICSA nor the agreement’s negotiators. Title 42 of the United States Code, Section 1725 (e) gave Congressional preauthorization to the State and Tribes to amend MIA within certain broad areas. Attorney General Steve Rowe confirmed this understanding at the TSWG meeting held November 19, 2007. Tim Woodcock, a staffperson for the US Senate Select Committee on Indian Affairs who helped write MICSA, confirmed MICSA authorization for State/Tribal changes to MIA.

It (referring to MICSA) also ratified and approved the MIA. It also ratified and approved and sanctioned agreements prospectively that the State and Tribes might make respecting jurisdiction and other important issues that otherwise you might have to go to Congress to get approval for so you have that authority in advance.
(Statement of Tim Woodcock to the TSWG, November 19, 2007)

A few sentences later Tim Woodcock continued:

And I recognized that the MICSA and the MIA might well just be the beginning of an ongoing relationship that might well have a considerable amount of dynamism in it and it might well be revisited from time to time to be adjusted. There was a mechanism for that to happen and I have to say in retrospect it's been a surprise to me that it really hasn't been amended at some point but I also recognize certainly that these are knotty issues.

The TSWG members unanimously agreed that MIA should be viewed as a living, dynamic document that had flexibility built into it to allow adjustments warranted by changes in the tribal-state relationship.

MIA originally reserved membership in MITSC to the Passamaquoddy Tribe, Penobscot Nation, and State of Maine. Last year, the Legislature enacted LD 373, An Act To Change the Membership of the Maine Indian Tribal-State Commission To Add Seats for the Houlton Band of Maliseet Indians and the State. LD 373 did not become law as the Penobscot Nation submitted its approval of the changes to MIA one day late. However, the State and the Tribes have agreed to act as though LD 373 became law. MITSC now consists of two representatives each for the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation with the State having six. The twelve MITSC Commissioners elect the chair. Doug Luckerman, counsel for the Micmacs, informed the TSWG that his client desires MITSC membership. The TSWG members unanimously supported this recommendation.

The TSWG’s final unanimous recommendation tasks the Governor’s Office with engaging the Tribes on the unresolved issues involving sovereignty, self-government, the

internal tribal matters and municipality language of §6206 in MIA, and other unresolved issues. Governor Baldacci's office had already begun arranging an initial meeting at the time of this report's publication.

Background

The Maine Legislature passed An Act to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and Create the Passamaquoddy Indian Territory and Penobscot Indian Territory as P.L. 1979, ch. 732. It is commonly referred to as the Maine Implementing Act (MIA). The US Congress passed companion legislation in 1980 known as the Maine Indian Claims Settlement Act (MICSA). The State and Federal Acts settled land claims brought by the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Indian Nation.

The Passamaquoddy Tribe and Penobscot Nation forced the US Dept. of Justice to file a lawsuit on their behalf in the summer of 1972 to recover 12.5 million acres assessed at \$25 billion. In 1980, the Maliseets joined the land claims process. Eventually, the lawsuit was settled in 1980 and produced the Maine Indian Claims Settlement Act and Maine Implementing Act. The overall Settlement totaled \$81.5 million paid exclusively by the Federal Government.

The monetary Settlement consisted of two parts. A Maine Indian Claims Land Acquisition Fund was created with \$54.5 million that made the Passamaquoddy and Penobscots eligible to place up to 150,000 acres each into trust in return for voluntarily dismissing their land claims. Trust lands are reserved for the sole use of the Tribe for which they are held with the deed of ownership kept by the Secretary of the Interior on behalf of the United States. The Houlton Band of Maliseets received a much smaller settlement of \$900,000 paid from the land acquisition money received by the Passamaquoddy Tribe and Penobscot Nation leaving the Passamaquoddy and Penobscots with \$26.8 million each. In addition, the Act established a Maine Indian Claims Settlement Fund with a deposit of \$27 million divided in half for the Passamaquoddy Tribe and Penobscot Nation to be held in trust by the Secretary of Interior.

Nine years after passage of MIA the State of Maine and the Aroostook Band of Micmacs negotiated the Micmac Settlement Act. The Micmac Settlement Act did not take effect as it was never ratified by the Micmac Tribe. Two years later Congress passed the Aroostook Band of Micmacs Settlement Act (ABMSA). Section 2(a)(5) states, "It is now fair and just to afford the Aroostook Band of Micmacs the same settlement provided to the Houlton Band of Maliseet Indians for the settlement of that Band's claims, to the extent they would have benefited from inclusion in the Maine Indian Claims Settlement Act of 1980." The ABMSA created the Aroostook Band of Micmacs Land Acquisition Fund infused with \$900,000 within the US Treasury.

Besides specifying the compensation to be paid to the Tribes, MICSA, ABMSA and MIA established a new legal relationship between the Tribes, the State of Maine and the United States defining certain powers and jurisdiction belonging to each. Though enacted with the hope of settling these questions of powers and jurisdiction, over time interpretation and implementation of certain provisions of the settlement acts have become viewed by the Tribes as oppressive and unjust. Negotiators of the original agreements have expressed concern that their implementation

has deviated from the understanding reached by the parties in 1980 and 1991. In addition, MIA and the Micmac Settlement Act fail to take into account changes in the capabilities and capacities of the parties achieved over 27 years that warrant adjustments in the tribal-state relationship.

Deliberations and Meetings of the Tribal-State Work Group

Few people know that the Wabanaki Tribes residing in Maine, the Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Indian Nation, comprise some of the oldest continuous governments in the world. These Tribes existed for thousands of years prior to the wave of European contact that occurred in the fifteenth, sixteenth, and seventeenth centuries. Prior to European contact the Wabanaki enjoyed tremendous freedom of movement throughout what we today call Maine, routinely moving great distances according to the seasons to exploit advantageous living conditions. They lived their lives according to Tribal ancient laws, traditions, customs and practices that had passed from one generation to the next.

As Europeans populated Maine, Wabanaki lands shrunk and their freedom to move and live as they saw fit steadily diminished. Upon Maine becoming a state in 1820, the Wabanaki suffered a 160 year period in which every facet of their lives was controlled by Maine laws. The Aroostook Band of Micmacs endured an additional eleven years of Maine control over their affairs due to their later recognition in 1991. Maine published all of its laws controlling Indians in the commonly referenced blue book, *State of Maine: A Compilation of Laws Pertaining to Indians*, prepared by the now defunct Department of Indian Affairs.

Tribal representatives made clear during the Tribal-State Work Group process that the Maine Indian Claims Settlement and later the Aroostook Band of Micmacs Settlement Act were intended to end Maine control over Indian lives and restore some of the freedom that the Wabanaki previously enjoyed prior to Maine statehood. Butch Phillips stated at the August 20, 2007 meeting that the Tribes sought the protections afforded under the internal tribal matters language so they could protect the activities most important to an Indian. He explained that the Tribes wanted to avoid anyone ever again telling them what to do on their lands. In the most basic sense, the much disputed and litigated term “internal tribal matters” which appears in §6206 of MIA was intended to protect the Tribes from outside interference in how they wish to live. For the Tribal representatives, they never relinquished their inherent sovereignty derived from their creator, GheChe’Nawais.

Tribes expected the settlement acts to strengthen their governments, improve their living conditions, and help sustain themselves as unique peoples. Most importantly, the Tribes stand committed to protecting and sustaining their cultures. Congress also viewed MICSA as protection against the acculturation of the Tribes.

Nothing in the Settlement provides for acculturation, nor is it the intent of Congress to disturb the culture or integrity of the Indian people of Maine. To the contrary, the settlement offers protections against this result being imposed by outside entities by providing for tribal governments which are separate and apart

from the towns and cities of the State of Maine and which control all internal matters. *Senator Melcher, Report to the Senate Select Committee on Indian Affairs, Authorizing Funds for the Settlement of Indian Claims in the State of Maine, S. 2829, Report Number 95, 95th Cong., 2nd Session, September 17, 1980.*

While the Tribes can cite improvements in their living conditions, the gains to date have been modest. Outside entities continue to impose their will on the Tribes using provisions of the settlement acts against the Tribes. Tribal cultures remain vulnerable to acculturation.

During the October 3 TSWG meeting, the Wabanaki presented a PowerPoint presentation (see appendix five) titled “History and Perspectives of the Wabanaki Tribes.” The presentation included history, statistical information, and a Wabanaki perspective on history too often distorted by a victor’s sensibility. Wabanaki presenters reminded the TSWG of some ugly history that included the placement of bounties on Indian lives, a deliberate program to suppress and eradicate Wabanaki languages, and the economic and political control that the Indian Agent exerted over Wabanaki people.

The presentation also stressed the inequality in living conditions experienced by the Wabanaki today. Though the Tribes can point to improvements in their living conditions since receiving federal recognition, gaping disparities in their health status, life expectancy, and standard of living exist between them and other population groups residing in Maine. Such huge disparities raise fundamental questions of social and political justice.

Wabanaki people generally live far shorter lives in poorer health with far fewer educational and economic opportunities. All four Tribes possess life expectancy averages more than 20 years less than the Maine population at large. Tribal unemployment rates range from 15% to 70% compared to neighboring populations of 5% to 8%. Maine Indian household incomes average less than \$20,000 in some areas, far under the statewide average. Indian Health Services spent on average \$2,130 per capita on medical care for Indian people in 2005 compared to a nationwide average of \$6,423. Many educational barriers exist for Wabanaki people despite the University of Maine System tuition waiver and scholarship program.

For more than two decades, a public discourse has occurred with the Tribes asserting that the implementation of MIA and the other settlement acts have diverted from their original intent. The TSWG Wabanaki representatives articulated this position during the TSWG meetings. In order to gain as balanced and complete a perspective as possible on this question of original intent, the TSWG invited John Paterson, a former Maine Deputy Attorney General and principal negotiator of MIA for the State, and Tim Woodcock, who assumed a key position on the Senate Select Committee on Indian Affairs in March 1980 shortly before the settlement was presented to Congress, to address the Work Group. Both addressed the TSWG on November 19, 2007. Near transcripts of their remarks are available courtesy of Gale Courcy Toensing of Indian Country Today (see appendix six).

John Paterson confirmed an often repeated Tribal contention that the Maine Implementing Act never intended to make the Passamaquoddy Tribe or Penobscot Nation municipalities. On November 19, 2007, John Paterson stated, “The idea was not to make the

Tribes municipalities like cities and towns but to use the idea of municipal powers as a way of identifying those sovereign powers which the tribe would have.” Paterson continued later by saying:

So as we talked it through in great detail – it was at this point we hired F. Paul Frinsko. He was the foremost municipal lawyer in the State of Maine. If memory serves he even sat in on some negotiations. We talked about what that meant and what the Tribes could do and we talked through the fact that the Tribes had the authority to manage their own land, run their own schools, zone their own lands, tax or not tax as they chose, exercise environmental regulations, have their own police and fire department, manage their own roads, run health clinics—in short everything a town could do without being called a town--that was the model.

Sovereignty was frequently discussed throughout the TSWG meetings. Several documents devoted to the topic of Tribal Sovereignty were shared with Work Group members. Though not using the term, Butch Phillips articulated a Tribal understanding of sovereignty as part of an opening statement he made at the October 3, 2007 TSWG meeting (see appendix seven):

The ability to govern ourselves within our own territory free from outside interference was agreed to in 1980. The constrained interpretation that the courts have placed on the phrase “internal tribal matters” and the municipal language of the Settlement Act has supplanted this agreement and as a result the Settlement Act has not provided the opportunity for true self-determination and self-governance for the Maine Tribes.

Tim Woodcock offered a personal interpretation of Tribal Sovereignty at the November 19, 2007 TSWG meeting:

With respect to the issue of sovereignty itself, it's a difficult issue. My own perspective on it, and I think the law supports me on this, is that tribal sovereignty is exercised by the tribes present in this gathering, predates the United States, it does not come from the United States, it does not come from the State of Maine -- it comes from those communities as preexisting entities, communities with political dimensions.

The Penobscot Nation and Passamaquoddy Tribe developed a joint proposal to amend the Maine Implementing Act in part to address the sovereignty dispute (see appendix eight). To support their proposed changes, the Penobscot Nation distributed a document, The Tribes of Maine (see appendix nine), during the January 11, 2008 TSWG meeting capturing history and facts supporting the Tribes’ negotiating position. They proposed a change to §6206 of MIA. The two Tribes advocated striking the General Powers language under §6206(1) and replacing it with the language “shall have, exercise, and enjoy all the rights, privileges, benefits, powers and immunities of any federally-recognized sovereign tribe within their respective Indian territory relating to their respective tribal members, lands and natural resources.” The Penobscot/Passamaquoddy proposal later lists twelve proposed powers that would include but

not be limited to under internal tribal matters (pp. 21-22 of the Penobscot/Passamaquoddy proposal).

State representatives on the TSWG did not support the broad changes affecting sovereignty and the related internal tribal matters and municipality clause of §6206 proposed by the Penobscots and Passamaquoddy. At the last TSWG meeting held January 11, 2008, Representative Simpson presented a proposal based on six points of agreement that had been discussed during meetings that occurred between the December 5, 2007 and January 11 TSWG meetings (see appendix 10). Doug Luckerman drafted a proposal on behalf of his clients, the Maliseets and Micmacs, that attempts to commit to statutory language the six points of agreement reached between the December and January TSWG meetings (see appendix 11 Omnibus Tribal Sovereignty Act of 2008). The State language proposed creating a new definition of internal tribal matters under the definition section found in §6203 (see appendix 12). This new definition would expand the powers listed under the current description of internal tribal matters found in §6206.

While a considerable amount of discussion occurred concerning Passamaquoddy/Penobscot concerns with their powers of self-government under MIA §6206, Maliseet Environmental Planner Sharri Venno told those gathered at the October 3 TSWG meeting that the Maliseets' issues involved other provisions of MICSA and MIA. MICSA gave us a couple of things. One, it provided federal recognition. Two, it created the ability for the State of Maine and Maliseets to discuss jurisdictional issues. Sharri Venno believes MIA contradicts much of MICSA. She relayed an instance when a State court resolved an internal Maliseet political dispute. Sharri Venno also cited contradictions between MIA and MICSA on taxation issues applicable to the Maliseets. The problems that the Maliseets have faced are not focused on internal tribal matters but more general issues.

Time worked against the TSWG during the end of the process. Work Group members did not have sufficient time to examine, discuss, possibly adopt, and/or offer alternatives to the Penobscot/Passamaquoddy and State proposal on sovereignty and internal tribal matters. The Work Group agreed to ask Governor Baldacci's Office to create a smaller group to continue working on the sovereignty/internal tribal matters question.

Besides sovereignty, internal tribal matters, and the municipality reference in §6206 of MIA, the Tribes raised the issue of the venue where disputes involving the settlement acts are heard and resolved. From a Tribal perspective, having disputes judged in the courts of one of the parties to the dispute is inherently unfair and violates many people's sense of justice. The Tribal emphasis placed on the issue of venue mirrors the importance that MITSC gave the issue when it prepared a briefing document for the May 8, 2006 Assembly of Governors and Chiefs (see appendix 13).

Problem Statement: Two of the sovereigns belonging to MITSC have consistently maintained that resolving disputes between the parties in the courts of the third sovereign, the State of Maine, is inherently unjust. An alternative dispute resolution process that could be independent of the judicial system of the State of Maine ought to be evaluated.

Several different proposals for replacing State Court jurisdiction for disputes involving MIA were advanced and discussed. An earlier Passamaquoddy/Penobscot proposal suggested submitting such disputes to a United Nations Indigenous arbitrator with disputes unresolved by that entity appealable to the federal district court in the District of Columbia. After several State appointees expressed opposition to any United Nations involvement, the Passamaquoddies and Penobscots presented at the final TSWG meeting the idea of creating a special Tribal-State Court with jurisdiction over any disputes involving MIA. Under the proposal, the Tribes would appoint three judges and the State would appoint three judges to this special court. The Tribal-State Court proposal received little discussion during the final TSWG meeting.

Strong agreement emerged among TSWG appointees to strengthen the dispute resolution role originally envisioned for MITSC. Butch Phillips, a member of the Penobscot Nation negotiating team that represented the Tribe during the land claims discussions with the State, explained in an exchange with John Paterson at the November 19, 2007 TSWG meeting:

How MITSC came about. We were in disagreement on fishing rights on waters that border both the state and tribal lands and the upcoming Indian territory, the newly acquired land, and we kicked this around for quite some time. Andy Akins, who was the chairman of our negotiations committee, made the recommendation. He said let's form a commission or committee of State and Tribal people to look at these disputes on these waters and from there it expanded -- this commission would be the liaison between the Tribes and the State and they would listen to disputes and try to come up with some resolutions.

Though not reflected in the final recommendations of the TSWG, the Maliseets and Micmacs expressed a desire to expand hunting opportunities for their Tribes' members. In comparison to the Passamaquoddy Tribe and Penobscot Nation, the Maliseets and Micmacs land holdings comprise a fraction of the larger Tribes' land bases. At this time, the Maliseets and Micmacs do not control sufficient land to establish their own hunting seasons for traditionally hunted game such as moose. A joint Wabanaki proposal presented at the December 5, 2007 TSWG meeting proposed creating sustenance moose hunting rights for each Tribe. The proposed language would allow the taking of one moose per Maliseet and Micmac household, from any location where the hunting of such game is allowed, until such time as the Maliseets and Micmacs acquire trust lands sufficient to support the hunting of moose. Several questions raised about the proposal and insufficient time did not allow a full examination of the idea.

Recommendations

The TSWG voted unanimously to support legislation to make several changes to Title 30 of the Maine Revised Statutes, MIA, and the Micmac Settlement Act. The proposed statutory changes include:

1. Change the heading for Title 30 from “Municipalities and Counties” to “Municipalities, Counties and Indian Tribes”
2. Amend the law to achieve jurisdictional parity for all Tribes
3. Institute mandatory mediation by MITSC for tribal-state disputes prior to going to court with deadlines and requiring all parties to act in good faith
4. Require mandatory meaningful consultation with Tribes prior to any legislative, regulatory or policy change by the State that may have an impact on the Tribes
5. MITSC to continue studying and analyzing potential changes to the Act and may make formal recommendations to the amend the Act to the Judiciary Committee every two years, or more often as it deems appropriate, with MITSC having the explicit authority to introduce such legislation
6. The Maine Tribes not be subject to the Freedom of Access laws (FOA) for any purpose. In MIA, the TSWG said this should be included under the internal tribal matters language, not the municipality status language.
7. That the statement of intent for the settlement acts specify that the documents are to be viewed as dynamic, flexible, and to be regularly revisited. In addition, that the Aroostook Band of Micmacs should be added to MITSC with a corresponding additional seat(s) for the State. Though the Maine Legislature passed a bill last year to add the Houlton Band of Maliseet Indians to MITSC, it did not become law due to the late certification of acceptance by one Tribe.

As previously stated, the TSWG passed as its final recommendation that the Executive Branch of State Government invite the Tribes to discuss unresolved issues and sovereignty.

Appendix 1

AN ACT TO IMPLEMENT THE LEGISLATIVE RECOMMENDATIONS OF THE TRIBAL-STATE WORK GROUP

Be it enacted by the People of the State of Maine:

Sec. 1. 3 MRSA §602 is amended to read:

§602. Designation of officer

The governor and council of the Penobscot Nation, the Joint Tribal Council of the Passamaquoddy Tribe, ~~and~~ the council of the Houlton Band of Maliseet Indians ~~and the Tribal Council of the Aroostook Band of Micmacs~~ shall each designate, by name and title, the officer authorized to execute the certificate of approval of legislation required by section 601. The designation shall be in writing and filed with the Secretary of State no later than the first Wednesday in January in the First Regular Session of the Legislature, except that the designation for the ~~Houlton Band of Maliseet Indians Aroostook Band of Micmacs~~ must be filed with the Secretary of State no later than 45 days after adjournment of the Second Regular Session of the ~~112th~~ 123rd Legislature. The Secretary of State shall forthwith transmit certified copies of each designation to the Secretary of the Senate and the Clerk of the House of Representatives. The designation shall remain in effect until the governor and council of the Penobscot Nation, the Joint Tribal Council of the Passamaquoddy Tribe, ~~or~~ the council of the Houlton Band of Maliseet Indians or the Tribal Council of the Aroostook Band of Micmacs make a new designation.

Sec. 2. 30 MRSA, first 2 lines are amended to read:

TITLE 30 MUNICIPALITIES, ~~AND~~ COUNTIES AND INDIAN TRIBES

Sec. 3. 30 MRSA §6205-A is repealed.

Sec. 4. 30 MRSA §6206-A is repealed.

Sec. 5. 30 MRSA §6208-A is repealed.

Sec. 6. 30 MRSA §6212 is amended to read:

30 § 6212. Maine Indian Tribal-State Commission

1. Commission created. The Maine Indian Tribal-State Commission is established. The commission consists of ~~9~~ 17 members, ~~4~~ 8 to be appointed by the Governor, subject to review

by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 to be appointed by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation, 2 to be appointed by the Aroostook Band of Micmacs, 2 to be appointed by the Houlton Band of Maliseet Indians and a chair, to be selected in accordance with subsection 2. The members of the commission, other than the chair, each serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of a member, the appointing authority may fill the vacancy for the unexpired term.

2. Chair. The commission, by a majority vote of its 8 16 members, shall select an individual who is a resident of the State to act as chair. When 8 16 members of the commission by majority vote are unable to select a chair within 120 days of the first meeting of the commission, the Governor, after consulting with the governors of the Penobscot Nation, and the Passamaquoddy Tribe, the Aroostook Band of Micmacs and the Houlton Band of Maliseets, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. In the event of the death, resignation or disability of the chair, the commission may select, by a majority vote of its 8 16 remaining members, a new chair. When the commission is unable to select a chair within 120 days of the death, resignation or disability, the Governor, after consulting with the governors of the Nation, and the Passamaquoddy Tribe, the Aroostook Band of Micmacs and the Houlton Band of Maliseets, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. The chair is a full-voting member of the commission and, except when appointed for an interim term, shall serve for 4 years.

3. Responsibilities. In addition to the responsibilities set forth in this Act, the commission shall continually review the effectiveness of this Act, the Micmac Settlement Act (chapter 603) and the Omnibus Tribal Sovereignty Act (chapter 605), and the social, economic and legal relationship between the Passamaquoddy Tribe, and the Penobscot Nation, the Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians and the State and shall make such reports a report and recommendations to the Legislature, the Passamaquoddy Tribe, and the Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs by January 31st of every other year, beginning in 2009, or more often as it determines appropriate. The commission may submit legislation necessary to implement its recommendations.

Seven Eleven members constitute a quorum of the commission and a decision or action of the commission is not valid unless 5 9 members vote in favor of the action or decision.

4. Personnel, fees, expenses of commissioners. The commission may employ personnel as it considers necessary and desirable in order to effectively discharge its duties and responsibilities. These employees are not subject to state personnel laws or rules.

The commission members are entitled to receive \$75 per day for their services and to reimbursement for reasonable expenses, including travel.

5. Interagency cooperation. In order to facilitate the work of the commission, all other agencies of the State shall cooperate with the commission and make available to it without charge information and data relevant to the responsibilities of the commission.

6. Funding. The commission may receive and accept, from any source, allocations, appropriations, loans, grants and contributions of money or other things of value to be held, used or applied to carry out this chapter, subject to the conditions upon which the loans, grants and contributions may be made, including, but not limited to, appropriations, allocations, loans, grants or gifts from a private source, federal agency or governmental subdivision of the State or its agencies. Notwithstanding Title 5, chapter 149, upon receipt of a written request from the commission, the State Controller shall pay the commission's full state allotment for each fiscal year to meet the estimated annual disbursement requirements of the commission.

7. Mandatory, non-binding mediation. Before the State or any of its political subdivisions may commence litigation or an administrative action involving interpretation of this Act, the Micmac Settlement Act or the Omnibus Tribal Sovereignty Act, it must submit the dispute to the commission for mediation. The commission shall mediate the dispute between the parties or shall designate a neutral third party to conduct the process. All parties to mediation before the commission or its designated neutral third party must make a good-faith effort to inform the commission and the other parties regarding the nature of the dispute and to resolve the dispute prior to commencement of litigation or administrative action. Unless the parties otherwise agree, reasonable fees and expenses incurred by the commission in connection with any mediation must be apportioned and paid in equal shares by each party. Unless the commission consents to an extension, all mediations must be commenced within 60 days, and completed within 90 days, of the commission's receipt of notice of dispute. At the conclusion of the mediation, the commission shall indicate in writing whether the parties have resolved all or parts of the dispute, and shall describe the terms of the resolution. If no resolution is reached, the commission shall indicate that fact in writing. Notwithstanding any law to the contrary, any statute of limitations applicable to the issues included in the dispute is tolled until the commission issues a written determination. The Commission may adopt rules to carry out this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 7. 30 MRSA §6215 is enacted to read:

§6215. Legislative, regulatory and policy changes by the State

Every State agency shall provide for a timely and meaningful consultation with each Indian tribe, nation or band before proposing, adopting or implementing legislation or administrative measures that may materially affect the Indian tribe, nation or band.

Sec. 8. 30 MRSA §7204 is repealed.

Sec. 9. 30 MRSA §7205 is repealed.

Sec. 10. 30 MRSA §7206 is repealed.

Sec. 11. 30 MRSA §7207 is repealed.

Sec. 12. 30 MRSA c. 605 is enacted to read:

CHAPTER 605
OMNIBUS TRIBAL SOVEREIGNTY ACT of 2008

§7501. Short title

This Act shall be known and may be cited as "The Omnibus Tribal Sovereignty Act."

§7502. Legislative finding and declaration of policy

The Legislature finds and declares the following.

In 1980 the State enacted the Maine Implementing Act. The Act included an agreement reached with the Passamaquoddy Indian Tribe and the Penobscot Indian Nation that settled a land claim asserted by the Indians.

State and federal courts have since interpreted the language of the Maine Implementing Act as removing the Tribal sovereignty of the Passamaquoddy Indian Tribe and the Penobscot Indian Nation. It was not the intent of the State to remove the Tribal sovereignty of these Tribal governments. While the Maine Implementing Act confers State municipal status upon the Passamaquoddy Indian Tribe and the Penobscot Indian Nation this status was intended to limit, not terminate, the Tribes' own inherent sovereign authorities.

The agreement entered into between the State and Passamaquoddy Indian Tribe and the Penobscot Indian Nation also recognizes the on-going relationship between the Passamaquoddy Indian Tribe and the Penobscot Indian Nation and the federal government and the Maine Implementing Act should not be interpreted to interfere with or terminate that trust relationship.

The Houlton Band of Maliseet Indians in 1980, and the Aroostook Band of Micmacs in 1991 also settled land claims with the State. However, while the State agreed to support federal recognition for both of these Tribes, neither Tribe was provided the same jurisdictional authority over their lands as the Passamaquoddy Indian Tribe and the Penobscot Indian Nation. The Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians have functioning governments and land in trust for the benefit of their members; it is therefore fair and just, pursuant to the authority granted by Congress in 25 USC 1725(e)(2) and Pub. L. 102-171, Stat.

1143. 6(d) to afford both of these Tribes the same jurisdictional settlement provided to the Passamaquoddy Indian Tribe and the Penobscot Indian Nation and to recognize their inherent sovereign authority.

In the 28 years since the enactment of the Maine Implementing Act the Maine Tribes have developed Tribal governments that provide a substantial range of services to thousands of Tribal members. Also during that time considerable State and Tribal resources have been expended in legal disputes over the legal status of the Maine Tribes under the settlement Acts. These disputes have caused a substantial economic and social hardship for the Maine Tribes.

This chapter represents a good faith effort on the part of legislature to re-evaluate the effectiveness of the Maine Implementing Act and the Micmac Settlement Act and provide fair and just revisions. Determining the effectiveness of the Maine Implementing Act and the Micmac Settlement Act will require continuous and on-going review. The revisions made to the Settlement Acts in this legislation should not be construed as conclusive of any rights or obligations of either the State or the Tribes.

It is the Purpose of this Act to clarify the sovereignty of the Maine Tribal governments.

§7203. Powers, privileges and immunities

1. Applicable law. The following provisions of the Act to Implement the Maine Indian Claims Settlement (Chapter 601) apply to the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians and their respective Trust Lands:

- A. Title 30, section 6206;
- B. Title 30, section 6207;
- C. Title 30, section 6209-B;
- D. Title 30, section 6210;
- E. Title 30, section 6211; and
- F. Title 30, section 6214

2. Freedom of Access laws. Title 1, chapter 13 does not apply to the Passamaquoddy Tribe, the Penobscot Nation, the Aroostook Band of Micmacs or the Houlton Band of Maliseets.

Sec. 13. Contingent effective date. This Act does not take effect unless, within 60 days after the adjournment of the Second Regular Session of the 123rd Legislature, the Secretary of State receives written certification from the Houlton Band Council of the Houlton Band of Maliseet Indians that the band has agreed to the provisions of this Act, written certification from

the Tribal Council of the Aroostook Band of Micmacs, written certification by the Tribal Chief and the Council of the Penobscot Nation that the nation has agreed to the provisions of this Act and written certification by the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(2), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House and the Revisor of Statutes, except that in no event may this Act take effect until 90 days after adjournment of the Legislature.

SUMMARY

This bill contains statutory recommendations of the Tribal-State Work Group, established by Executive Order 19 FY 06/07 and continued and expanded by Resolve 2007, chapter 142.

This bill amends the statute that identifies the process by which the Tribes notify the Secretary of State when State legislation is approved by the respective tribal government to include the Tribal Council of the Aroostook Band of Micmacs.

This bill revises the Title of Title 30 to appropriately encompass the inclusion of laws that apply to Indian Tribes in Maine.

This bill provides for jurisdictional parity among the four Indian Tribes in Maine: The Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation, based on the powers, privileges and immunities outlined in the Act to Implement the Maine Indian Claims Settlement enacted in 1980. This bill enacts the Omnibus Tribal Sovereignty Act, which provides a statement of legislative intent and findings, and cross-references the powers, privileges and immunities to apply to the Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians. This bill repeals sections of the Implementing Act that provide different powers, privileges and immunities for the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs, or that are not consistent with federal law: section 6205-A (Acquisition of Houlton Band Trust Land), section 6206-A (Powers of the Houlton Band of Maliseet Indians), section 6208-A (Houlton Band Trust Fund).

This bill expands the membership of the Maine Indian Tribal-State Commission to include two representatives of the Aroostook Band of Micmacs and two representatives of the Houlton Band of Maliseet Indians, as well as four additional representatives of the State. It expands the duties of MITSC to include a continual review of the effectiveness of the Implementing Act the Micmac Settlement Act and the Omnibus Tribal Sovereignty Act. It authorizes MITSC to submit legislation directly to the Legislature. It also requires that before the State or any political subdivision commences a court or administrative action involving interpretation of the Implementing Act, the Micmac Settlement Act or the Omnibus Tribal Sovereignty Act, the dispute must first be presented to MITSC for mediation. The mediation provisions are based on current Civil Rules of Procedure concerning mediation.

This bill requires every State agency to provide for a timely and meaningful consultation with each Indian tribe, nation or band before proposing, adopting or implementing legislation or administrative measures that may materially affect the Indian tribe, nation or band.

This bill provides that the Freedom of Access laws do not apply to the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation.

This bill includes a contingent date section to provide that it does not take effect with respect to a particular Tribe unless that Tribe approves the legislation within 60 days of the adjournment of the Second Regular Session of the 123rd Legislature.

Appendix 2

19 FY 06/07

July 10, 2006

AN ORDER TO CREATE A TRIBAL-STATE WORK GROUP TO STUDY ISSUES ASSOCIATED WITH THE MAINE IMPLEMENTING ACT

WHEREAS, in Maine there are four federally recognized Indian tribes: the Penobscot Indian Nation, the Passamaquoddy Tribe, the Aroostook Band of Micmacs, and the Houlton Band of Maliseet Indians;

WHEREAS, in 1979, the Maine Legislature enacted AN ACT to Implement the Maine Indian Claims Settlement which implemented in part a settlement agreement between the State of Maine, and the Penobscot Indian Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseet Indians (“the Maine Implementing Act”);

WHEREAS, in 1980, the United States Congress ratified the Maine Implementing Act (“the Ratifying Act”);

WHEREAS, the Maine Legislature enacted the Micmac Settlement Act and the United States Congress enacted the Aroostook Band of Micmacs Settlement Act regarding the Aroostook Band of Micmacs (“the Micmac Acts”);

WHEREAS, the Maine Implementing Act, the Ratifying Act, and the Micmac Acts are collectively referred to herein as the “Settlement Acts”;

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WHEREAS, the Maine Implementing Act established the Maine Indian Tribal State Commission (“MITSC”) which was charged with continually reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Indian Nation and the State;

WHEREAS, on May 8, 2006, the Assembly of Governors and Chiefs, with the assistance of the Maine Indian Tribal State Commission, identified several differences of interpretation or understanding of the Maine Implementing Act and the Ratifying Act;

WHEREAS, the Governors and Chiefs appointed an Ad Hoc group to further identify issues upon which the State and Tribes differed regarding the Settlement Acts;

WHEREAS, on May 31, 2006, the Ad Hoc group enumerated a list of those issues;

WHEREAS, the differences of interpretation and understanding of the Settlement Acts have resulted in extensive litigation which has been an economic drain on the parties and often an impediment to efforts to make social and economic improvements that could benefit both the Tribes and the State; and

WHEREAS, a further analysis of the differences of interpretation or understanding of the Maine Implementing Act and the Ratifying Act, and an attempt at reconciling some of the differences, is warranted:

NOW THEREFORE, I, John E. Baldacci, Governor of the State of Maine, in consideration of all of the above, do hereby establish the Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act (“the Work Group”) as follows:

1. Purpose

The Work Group shall study differences in the interpretation and understanding of the Settlement Acts. The Work Group shall develop recommendations for how the 123rd Legislature might reconcile the issues in a manner that benefits both the Tribes and the State.

2. Work Group Membership

The Work Group shall consist of the following members:

1. Two members of the Senate, appointed by the President of the Senate;
2. Four members of the House of Representatives, appointed by the Speaker of the House;
3. The Governor of the Passamaquoddy Tribe at Indian Township, or a designee;
4. The Governor of the Passamaquoddy Tribe at Pleasant Point, or a designee;
5. The Chief of the Penobscot Nation, or a designee;
6. The Tribal Chief of the Houlton Band of Maliseet Indians, or a designee;
7. The Tribal Chief of the Aroostook Band of Micmacs, or a designee;
8. The Governor of the State of Maine, or the Governor’s designee; and
9. The Chair of the Maine Indian Tribal State Commission, or a designee.

3. Duties

The Work Group shall consider the differences in interpretations of the Settlement Acts enumerated by the Ad Hoc group.

4. Staff

The MITSC shall provide necessary staffing services to the Work Group.

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5. Attorney General's Office

The Maine Attorney General, or his designees, shall attend all meetings of the Work Group.

6. Report

No later than December 5, 2006, the Work Group shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Joint Standing Committee on the Judiciary.

7. Implementation Costs

The costs for implementing the duties included in this Executive Order shall be absorbed by the participating organizations.

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Effective Date

The effective date of this Executive Order is July 10, 2006.

John E. Baldacci, Governor

Appendix 3

Resolve, To Continue the Tribal-State Work Group

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this resolve needs to take effect before the expiration of the 90-day period in order for the tribal-state work group originally created by Executive Order 19 FY 06/07 to continue working during and after the First Regular Session of the 123rd Legislature and for its study and report to be completed in time for submission to the next legislative session; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Tribal-State Work Group established. Resolved: That the Tribal-State Work Group, referred to in this resolve as “the work group,” is established; and be it further

Sec. 2 Work group membership. Resolved: That the work group consists of 17 members appointed as follows:

1. Two members of the Senate, one belonging to the political party holding the largest number of seats in the Senate and one belonging to the political party holding the second largest number of seats in the Senate, appointed by the President of the Senate;

2. Six members of the House of Representatives, 3 belonging to the political party holding the largest number of seats in the House and 3 belonging to the political party holding the second largest number of seats in the House, appointed by the Speaker of the House;

3. Seven representatives of the Native American community, one appointed by each of the top elected leaders of the 5 Wabanaki Tribal Governments: the Chief of the Aroostook Band of Micmacs, the Chief of the Houlton Band of Maliseet Indians, the Governor of the Passamaquoddy Tribe at Indian Township, the Governor of the Passamaquoddy Tribe at Pleasant Point and the Chief of the Penobscot Nation; the Passamaquoddy Tribal Representative to be appointed by the Joint Tribal Council of the Passamaquoddy Tribe; and the Penobscot Tribal Representative appointed by the Chief of the Penobscot Nation;

4. One member appointed by the Governor; and

5. One representative of the Maine Indian Tribal-State Commission; and be it further

Sec. 3 Cooperation and participation of the Attorney General. Resolved:

That the Attorney General is requested to have a representative attend all meetings of the work group and respond to requests during the work group’s deliberations regarding the Attorney General’s opinion concerning the constitutionality and legal interpretation of any possible changes to AN ACT to Implement the Maine Indian Claims Settlement or related statutes and agreements; and be it further

Sec. 4 Chair. Resolved: That the first-named Senate member is the Senate chair of the work group and the first-named House of Representatives member is the House chair of the work

group; and be it further

Sec. 5 Duties. Resolved: That the work group may hold up to 6 meetings and shall examine the issues identified in the framework document prepared for the Assembly of the Governors and Chiefs held May 8, 2006, the minutes for that meeting, Tribal-Maine Issues: Issues That Have Been Litigated or Are in Litigation, and Tribal-Maine Issues: Macro Issues prepared for the May 31, 2006 review of AN ACT to Implement the Maine Indian Claims Settlement, the federal Maine Indian Claims Settlement Act of 1980 and other settlement acts pertaining to the Wabanaki Tribes for the meeting held at Indian Island May 31, 2006, the minutes for the May 31, 2006 meeting and the final report of the tribal-state work group created by Executive Order 19 FY 06/07; and be it further

Sec. 6 Staff assistance. Resolved: That, upon adequate appropriation by the Legislature, the Maine Indian Tribal-State Commission shall provide necessary staffing services to the work group; and be it further

Sec. 7 Compensation. Resolved: That the legislative members of the work group are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the work group. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a determination of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the work group; and be it further

Sec. 8 Report. Resolved: That no later than December 5, 2007, the work group shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 123rd Legislature, the Governor, the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe at Indian Township, the Passamaquoddy Tribe at Pleasant Point and the Penobscot Nation. The work group is authorized to introduce legislation related to its report to the Second Regular Session of the 123rd Legislature at the time of submission of its report; and be it further

Sec. 9 Work group budget. Resolved: That the chairs of the work group, with assistance from the work group staff, shall administer the work group's budget. Within 10 days after its first meeting, the work group shall present a work plan and proposed budget to the Legislative Council for its approval. Upon notice to the Executive Director of the Legislative Council that all seats on the work group have been filled, the personal services portion of the work group budget must be paid in full to the Maine Indian Tribal-State Commission. The work group may not incur expenses that would result in the work group's exceeding its approved budget. Upon request from the work groups, the Executive Director of the Legislative Council shall promptly provide the work group chairs and staff with a status report on the work group's budget, expenditures incurred and paid and available funds; and be it further

Sec. 10 Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

INDIAN TRIBAL-STATE COMMISSION, MAINE

Maine Indian Tribal-State Commission 0554

Initiative: Provides funds for administrative and staffing support for the Tribal-State Work Group.

GENERAL FUND	2007-08	2008-09
All Other	\$1,170	\$0

GENERAL FUND TOTAL	\$1,170	\$0
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INDIAN TRIBAL-STATE COMMISSION, MAINE
DEPARTMENT TOTALS

	2007-08	2008-09
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GENERAL FUND	\$1,170	\$0
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DEPARTMENT TOTAL - ALL FUNDS	\$1,170	\$0
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LEGISLATURE

Study Commissions - Funding 0444

Initiative: Provides funds for legislative per diem and other expenses for 6 meetings of the Tribal-State Work Group.

GENERAL FUND	2007-08	2008-09
Personal Services	\$5,280	\$0

All Other	\$5,550	\$0
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GENERAL FUND TOTAL	\$10,830	\$0
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LEGISLATURE
DEPARTMENT TOTALS

	2007-08	2008-09
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GENERAL FUND	\$10,830	\$0
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DEPARTMENT TOTAL - ALL FUNDS	\$10,830	\$0
SECTION TOTALS	2007-08	2008-09
GENERAL FUND	\$12,000	\$0
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SECTION TOTAL - ALL FUNDS	\$12,000	\$0

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

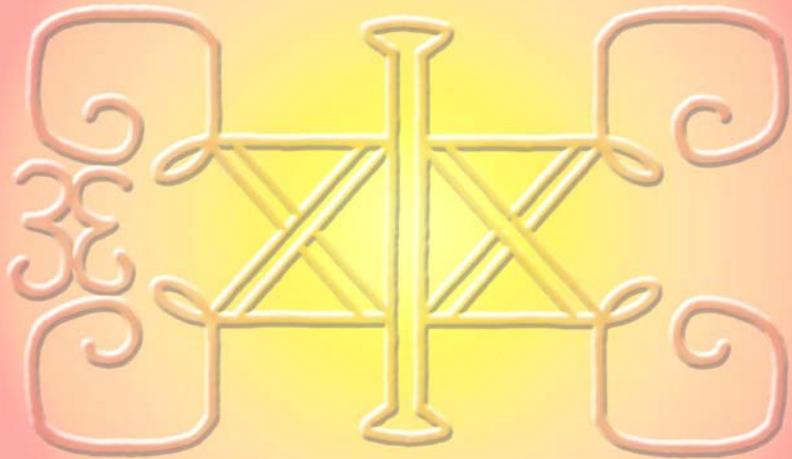
Appendix 4

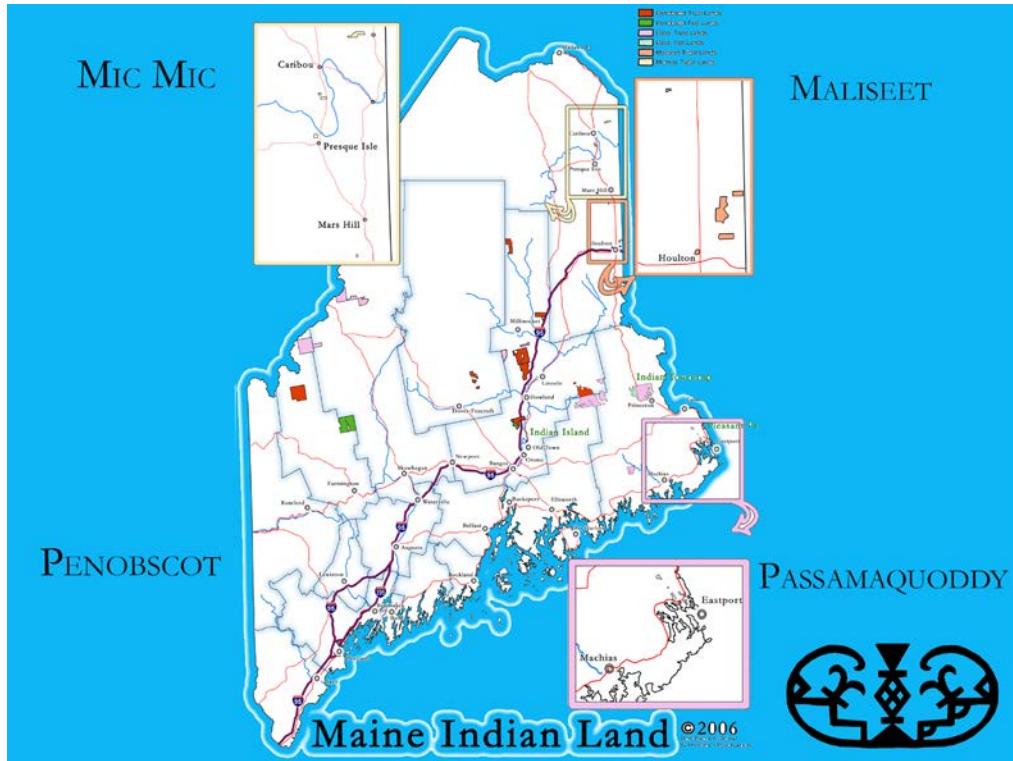
Tribal-State Work Group Members

Name	Address	Appointed by
Brian Altvater	P.O. Box 406 Perry, ME 04667	Chief Phillips-Doyle
Paul Bisulca	11 Briggs Lane Oxford, ME 04270	MITSC
Rep. Richard Blanchard	36 Fifth St. Old Town, ME 04468	Speaker Cummings
Chief Brenda Commander	88 Bell Rd. Houlton, ME 04730	Chief Commander
Rep. Richard Cleary	P.O. Box 9 Houlton, ME 04730	Speaker Cummings
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Rep. Henry Joy	P.O. Box 103 Island Falls, ME 04747	Speaker Cummings
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Tribal Council Member Elizabeth Neptune	P.O. Box 102 Princeton, ME 04668	Governor Nicholas
Reuben Butch Phillips	33 Tallwood Drive Milford, ME 04461	Chief Francis & Penobscot Nation Tribal Council
Chief Victoria Higgins	7 Northern Rd. Presque Isle, ME 04769	Micmacs
Chief Richard Phillips-Doyle	P.O. Box 343 Perry, ME 04667	Chief Phillips-Doyle
Sen. Kevin Raye	63 Sunset Cove Rd. Perry, ME 04667	Senate President Edmonds
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Rep. Deborah Simpson House Chair	551 Turner Street Auburn, ME 04210	Speaker Cummings
Passamaquoddy Tribal Representative Donald Soctomah	P.O. Box 159 Princeton, ME 04668	Passamaquoddy Joint Tribal Council appt

Appendix 5

History & Perspectives of the Wabanaki Tribes





Wabanaki People

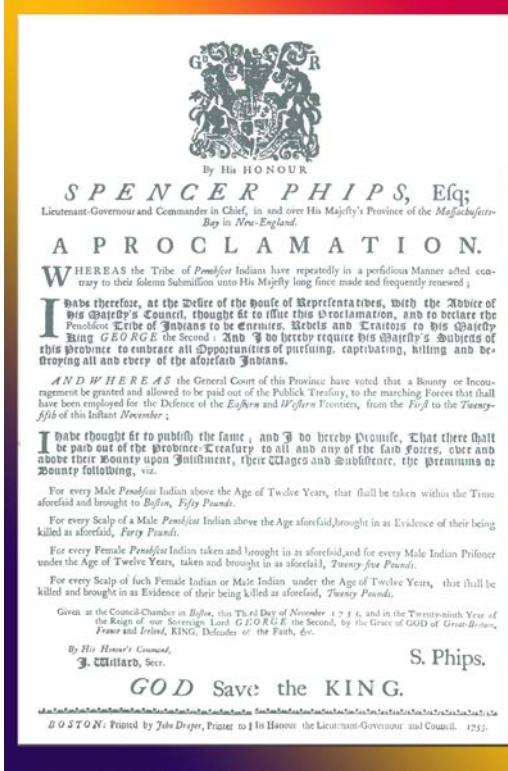
- Ancestors traced back 12,000 years
- One of the first to experience European Contact
- Probably the first to have a reservation established

Issues Effecting Interactions with Native American Populations

- **Historical Trauma**
- **Prejudice and stereotyping**
- **Losses in Native American Families and the history of Child Welfare on Reservations**
- **Cultural norms**
- **Legacy of Prejudice**

Historical Trauma

- ✓ Gordon's Island...Death follows visitors with gifts
- ✓ Services will Hurt...Green Beret as Dentists
- ✓ Religion will steal your beliefs and punish your children...Priests (SA) Nuns (PA)
- ✓ Language is bad and must be hidden.
- ✓ Sterilization
- ✓ The State can cut off your food supplies /dependent on Indian agent
- ✓ Illnesses from the outside will almost wipe you out
- ✓ Help hurts...Light Bulb story

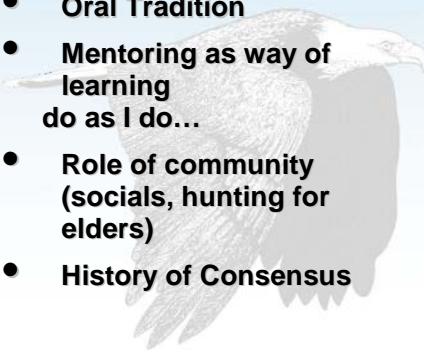


Losses upon Losses, The Native Trail

- ✓ Average life length (Indian Township) 49 years as opposed to 74 just down the road
- ✓ Early deaths=Motherless/fatherless children
- ✓ High rate of Suicide & Homicide
- ✓ Stiffer punishments for crimes in terms of jail time
- ✓ Higher representation in Justice System
- Loss of cultural practice
- Loss of land
- Loss of children before 1979 ICWA to non native homes
- Loss of self Esteem
- Loss of Faith in the System
- Secondary Oppression
- Loss of hope and increased feelings of Helplessness
- Loss of rights as

Cultural Norms and Traditions

- Matriarchal
- Elders important as source of knowledge
- Pause Time
- Language protected and remembered
- Spirituality important and ceremonies practiced increasingly
- Listening without questioning
- Deference to elders
- Tribe as family
- It takes a tribe to raise a child
- Importance of stories
- Oral Tradition
- Mentoring as way of learning
do as I do...
- Role of community (socials, hunting for elders)
- History of Consensus



What History has Taught Tribal Members a Legacy of Prejudice

- ✓ Promises are and will be broken
- ✓ Children will be taken away and not returned
- ✓ My beliefs and my culture does not matter
- ✓ Sexual abuse and physical abuse will happen when outsiders get access to our children
- ✓ My children, my land, my beliefs, my future

Penobscot Membership Analysis

Age	Membership	Female	Male
0-4	83	35	48
5-12	218	102	116
13-15	93	44	49
16-24	347	164	183
25-34	319	160	159
35-44	421	204	217
45-54	402	202	200
55-59	134	71	63
60-64	86	47	39
65+	175	92	83
Total	2278	1121	1157

- 46% of population is under the age of 35
- 17% of the population is elderly (55+ years)

Houlton Band of Maliseets Membership Analysis

Age	Membership
0-17	264
18-35	313
36-54	214
55+	78
Total	869

➤66% of the population is less than 36 years of age
➤1% of the population is elderly (55+ years)

Pleasant Point Membership Analysis

Age	Membership	Female	Male
0-4	87	49	38
5-12	198	107	91
13-15	115	77	38
16-24	273	103	170
25-34	457	240	217
35-44	204	112	92
45-54	219	107	112
55-59	289	151	138
60-64	93	46	47
65+	107	76	31
Total	2042	1068	974

- 54% of population is under the age of 35
- 14% of the population is elderly (55+ years)

Indian Township Membership Analysis

Age	Membership	Female	Male
0-4	54	25	29
5-12	175	84	91
13-15	50	24	26
16-24	218	108	110
25-34	211	106	105
35-44	407	213	194
45-54	158	79	79
55-59	75	36	39
60-64	48	24	24
65+	63	36	27
Total	1459	735	724

- 48% of population is under the age of 35
- 12% of the population is elderly (55+ years)

Education

Access Issues for Higher Education:

- **Remoteness of some tribes makes attendance difficult, especially for non-traditional students.**
- **Above average high school dropout rates delay entrance into higher education.**
- **Lower than average household income makes affordability of higher education unattainable for many tribal members who must work to support their families.**

Education

Success

- Passamaquoddy tribal member Wayne Newell appointed to UMS Board of Trustees.
- In the last 20 years, over 350 Penobscot tribal members have completed their program of study, ranging from certificate programs to Ph.D.'s.
- Several of Maine's college campuses have established programs designed specifically to provide support for Indian students, such as the Wabanaki Center at the University of Maine.

Education

Barriers

- **Tribal students in higher education are generally funded at less than half of their financial unmet need.**
- **Federal funding for scholarships has not kept up with annually increasing college costs, thereby increasing unmet needs.**
- **Indian student retention in higher education is at a lower rate than the general population, due to multiple socio-economic conditions.**

Employment

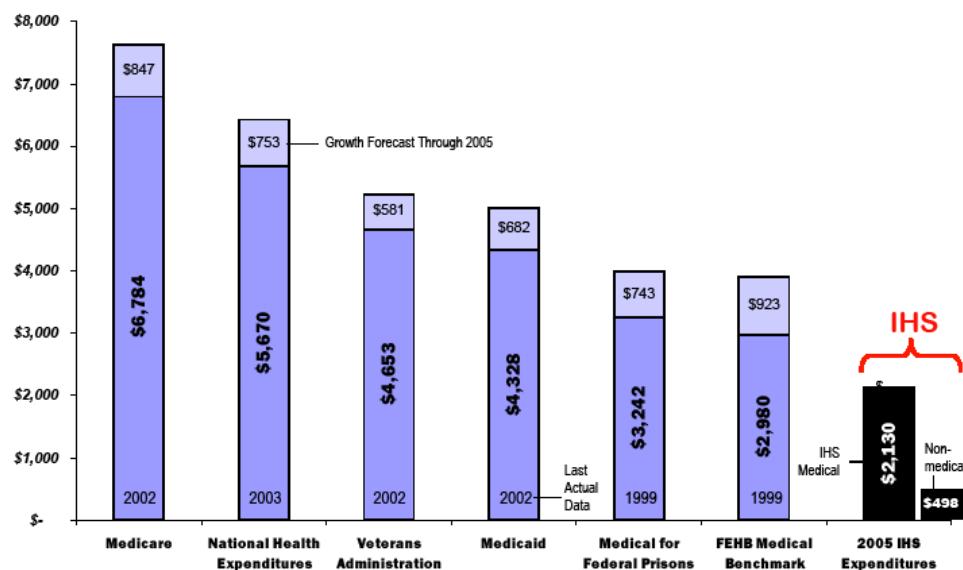
- **Tribal governments are generally the largest single employers of tribal members. Many more tribal members would like to work for their tribe, but employment opportunities are not readily available.**
- **Unemployment rates for Maine tribes vary anywhere from 15% to near 70%, substantially more than the State of Maine's unemployment rate of approximately 5% to 8%.**
- **Example: Indian Township has a 69.1% unemployment rate, and Pleasant Point has a 42% unemployment rate.**
- **The average household income for Maine Indians is less than \$20,000 in some parts of the State of Maine.**

Average Age of Death

Penobscot	57
Houlton	57
Indian Township	51
Pleasant Point	52



2005 IHS Expenditures Per Capita Compared to Other Federal Health Expenditure Benchmarks



See notes on reverse for data sources and forecast assumptions.

January 2006

Leading Health Issues

- Cancer
- Cardiovascular Disease
- Diabetes and Complications
- Substance Abuse/Mental Health
- Bone/Joint Problems
- Respiratory Illnesses
- Accidental Injuries

Funding

- **Currently Indian Health Services has a 3 billion dollar deficit in funding nationwide**
- **Indian Health Service funds approximately 60% of the necessary health care needs**

Health Statistics

- Overall life expectancy of Native Americans Indians is 5 – 12 years shorter than the general U.S. population
- Native American have a much higher chronic disease rate than the general U.S. general population
- 17% of all Native Americans have diabetes

Health Statistics

- Mortality from diabetes is 3 times higher in the Native Americans than the general U.S. population
- The number of Native Americans under the age of 35 years diagnosed with diabetes has increased by 133% from 1990 to 2004

Health Statistics

- **Penobscot Nation:**

- 52% of diabetics are ages 45 – 64
- 100% of diabetics are Type 2
- 26% were diagnosed 10 years or more ago
- 70% are obese
- 32% smoke
- 23% of the children at Indian Island School are obese

Health Statistics

- **Houlton Band of Maliseets:**
 - 5% of diabetics are ages 45 – 64
 - Extremely young population of diabetics
 - 100% of diabetics are Type 2
 - 79% were diagnosed 10 years or more ago
 - 29.4% are obese
 - 31.2% smoke
 - 12% of the children at HBMI are obese

Health Statistics

- Indian Township:
 - 45% of diabetics are ages 45 – 64
 - 96% of diabetics are Type 2
 - 60% of diabetics diagnosed more than 10 years ago
 - 68.3% are overweight/obese
 - 34% smoke (70% screened)
 - 48% of the children at Indian Township School are obese

Health Statistics

**47 cases of cancer have been diagnosed
since 1997:**

- lung
- multiple myeloma
- breast
- prostate
- colon

**"However, I hope that some day
the State of Maine will
understand that the Tribes' pursuit
of sovereignty is not just an
annoying flexing of tribal muscle,
but is inextricably linked to their
quest for survival both as peoples
and as cultures."**

***-Diana Scully,
Former Executive Director MITSC***

Appendix 6

Nov. 19, 2007, Tribal-State Work Group meeting, Cross State Office Bldg, Augusta, Maine

John Paterson former deputy ag in maine

Thank you madam chairwoman.. I appreciate it... it's a privilege to be here today I must say I was required to go back and read stuff I hadn't read in....it's good to see some old friends, some old opponents and some old friends again

I'm a partner in the firm of Bernstein, Shur, Sawyer & Nelson maine I've been in private practice since c1981 since shortly after the (settlement act...)

I worked in the ag's office for 12 years --- as assistant ag for natural resources for five years and then in late 1985 I became deputy ag and assumed the responsibility or directing the efforts of that office with respect to the Indian land claims case

Before coming here today I did some preparation to get a sense of what you all were dealing with and paul and john were kind enough to send me materials that.... including your charge from the legislature, some of your committee minutes, and also some of the presentations made to you by tribal members I have a sense of what the dialogue has been about thus far

I understand one of the issues that you're grappling with -- and I understand it being an extremely difficult and complicated issue-- and that is the issue of tribal sovereignty and that was obviously one that we dealt with in great detail more than 25 years ago now

I understand the tribes have extremely strong feelings about it and I don't intend to...I don't -- not in a position to express or nor do I .feel comfortable about expressing a view about their view of that issue

XXXX

I think that the best thing I can do to be of help to you is to give you some background as to how the current legal arrangement came to be and leave it up to you to grapple with what happens on a going forward basis

I don't know if you've all had a chance to read all the settlement documents--- they're extremely complicated....

There are four foundational documents: the maine implementing act which is the provision containing the maine statutes that define the legal relationship between the tribe, tribal lands and the state

The federal settlement act which extinguished the land claims, appropriated \$81.5 million for the tribe, approved the maine settlement act, -- the maine implementing act

came first --- it delegated to the state and the tribes the authority thereafter to change their relationship without having to go back to the federal government **XXXX** and then it granted federal recognition to the tribe for the first time ever in the 200 years history of the united states along with all the accompanying federal benefits that came with that

In addition there were two other foundational documents -- the report of the special maine legislative committee on which sen. Mitchell sat, which held an extensive public hearing at the maine civic center at the time which was very unusual and generated a lengthy written committee report about its findings and its conclusions and appended to it some responses to q-and-a and which it posed to the ag to establish the legislature's understanding as to some of the nuanced provisions of the act

And finally there was the report of the house interior committee and senate select committee on Indian affairs which were very detailed and went into the history of the claim and basis of the settlement and discussed some of the and reasons behind the various provisions in the end.

Why were there two seperate laws -- the state of maine implementing act the federal act?

The reason is only the federal government has plenary powers that is exclusive powers to regulate affairs of native Americans on their lands-- states can't do that

Under the settlement act we proposed to do that very thing for in order to make that legal--in order to make that enforceable there ...a fed act which approved what the state and the tribe agreed to

XXXX

As I said there was a unusual -- very unusual --amount of legislative history accompanying these bills -- there was a very unusual lengthy report -- a hearing in augusta civic center and I think it was 1980 attended by literally hundreds of people including the tribal representative, the attorney general's off and all the parties had an opportunity to express their views about the wisdom of the settlement
And there were pubic hearings before the us senate select committee on Indian affairs on which my colleague tim woodcock so ably served

At the time then sen william cohen was a member of the senate select committee . . . attended .sen george mithell as a matter of courtesy....

Over last 25 years or so I've heard various things said by various people – and I'm not pointing the finger at anybody in particular -- but the suggestion has been made suggesting there was a misunderstanding about the scope or importance of the settlement act or the state had some sort of unfair bargaining power with respect to reaching agreement or that there had been some sort of behind the scenes negotiations that the tribes did not participate in and which affected the form the final settlement took

Both tim and I can tell you that nothing can be further from the truth
XXXX

With respect to the ...mia and federal settlement act – every word of those two pieces of legislation were negotiated between the tribes and the ag's office -- every comma, every period, every dotted I every crossed t-- those bills were drafted in their entirety by both the state and the tribes and presented as full pieces of completed legislation to the maine legislature to enact as is without change -- that was the agreement of the parties and that's exactly what the maine legislature did

The same was true of the federal settlement act we negotiated both acts in tandem so when went walked out of the negotiating room we had two completed pieces of legislation with the joint understanding that the state act would go to the state legislature first for enactment and if it was approved it would then go to congress for enactment by congress for putting an end to the land claims case, for paying the tribes the agreed upon sum, and for approving what had been done by the maine legislature

Ever word of the legislative committee report both of the maine legislature and of the us senate and house were also if not drafted by the parties, reviewed by the parties -- in fact tim can tell you about I think the better part of a week that tim and his colleague on the committee in Washington reviewing every word of the ...senate committee report that tim had participated and drafted and in fact agreeing to various changes that one side or the other wanted in the committee report for various complicated reasons which im now too old to remember frankly

The parties in all the negotiations were ably represented on both sides---on the tribes' side there was a ten member negotiating committee of five members from Passamaquoddy and five members of the penobscot

Jim you were on that commtie as I recall – butch I don't remember if you were or not and they were ably represented by tom tureen who was the architect of the entire land claims act to begin with and was one of the ablest lawyers I ever dealt with

Tom was the architect and inventor for the entire land claims act and led the tribes thru the entire settlement process in an extraordinarily able fashion
tom and I clashed frequently, disagreed about all sorts of things but I do not for a moment underestimate tom's skills as an attorney

On the state side we had myself and during the negotiations attorney general cohen and we were assisted behind the scene by jim st clair and bill lea ?? and the firm of hale blah and blah ??

jim st clair had been consigliere to pres Nixon during watergate ... we also had the assistance of paul Frinsko of Bernstein shur and blah??? -- who's now a colleague of mine -- with respect to municipal issues...

And on the tribal side when the matter-- the legislation was ultimately presented for enactment by congress there was the bia and their legal staff which vetted the entire settlement act and in some respects had more reservations about it and aspects of it than the tribes did

there was also the participation of the maine legislative committee and the senatorial committee -- tim will tell you more about that...

I cannot emphasize to you too strongly my strong belief that everybody understood every word of what we had agreed to -- admittedly the agreement is truly unique-- that's a redundancy there's nothing like it in the country -- how did it come to be? to answer that I have to give you a little history

Like I said I had to go back and read my three ring binder with the material to ... my memory to a lot of these events... forgive me is if it seems to go back a little beyond the settlement act but I think you need to understand the full concept and sequence of events to understand how we got from a to b

The land claims itself was generated by a ...of four what has been referred to as treaties between the two tribes and the state of massachusetts and later maine - the result of four treaties 1794, 1796, 1818 and 1834 the first three with mass and the last with maine

As a result of those agreements the tribes claimed they gave up land
Whatever the merits of that claim didn't matter and whatever anybody views of those history events today doesn't matter anymore
XXXX

In the early 1970s the tribes had a moment of extraordinary good fortune when they go the services of tom tureen and tom tureen discover a legal theory to place on the four agreements

And basically tom tureen's legal theory was that those four agreements were illegal from the day they were entered into

And that legal theory was based upon what was called the Indian trade intercourse act a law enacted in 1790 it was one of the first acts of the us congress after the creation of the constitution and tom's theory was that those agreements were void from the day they were entered into and that the tribes were entitled to get all of their lands back and that working with anthropologists and historians...tom's theory was that the tribes were entitled to the return of 12 million acres of land -- roughly two thirds of the state of maine comprising all of eastern maine and that the claims encompassed state of maine comprising all of eastern maine and that the claims encompassed not just state land but all of the privately owned land in the claim area -- hundreds of thousands of homeowners -- a claim of extraordinary unprecedented proportions within the us

tom however was a clever enough lawyer to know that he couldn't and didn't want to bring that claim against everybody who lived in eastern maine because the case would simply backfire on him

So tom devised a strategy to include only state owned lands in the claim arena which would have included Baxter park

Unfortunately, the tribes couldn't sue the state of maine – unfortunately from the tribes' point of view -- in either state or federal court because of sovereign immunity issues -- sovereign immunity in the state court - the 11th amendment in the us constitution in the federal court...

so tom went to the us doi and bia and said look we're an indian tribe under federal indian law you owe us a trust responsibility to protect our legal rights -- we have this claim against the state of maine we want you to assert it

the feds said no you're not a federally recognized tribe we're not going to assert this claim on your behalf

So in 1972 tom tureen on behalf of the Passamaquoddy tribe filed a lawsuit against the doi seeking a declaration from the court that in fact the doi did have that trust responsibility and did have to sue the state of maine

And immediately after doing that he did a second brilliant stroke -- he got the federal court to actually order the doj to sue the state of maine

So in 1972 the us government filed two law suits both entitle the us versus the state of maine, one on behalf of the Passamaquoddy and one on behalf of the Penobscot seeking return of all their land in eastern maine

Now ... it was only against the state as a state entity but it threatened the filing of what was called the defendants class action, which would have eventually drawn into it everybody in the 12 million acre claim territory

The case was immediately put on hold while the tribes case against the federal government of the declaration of the trust responsibility proceeded forward...and in 1974 the tribes won -- they got a decision from us district court in Portland declaring the doi did indeed have a trust responsibility to the tribes to pursue this claim

that case was appealed in 1975 the first circuit in 1975 agreed with judge Gignoux ?? in district t court

at that point no appeal was taken to the us supreme court – the feds had two cases pending against maine...

remarkably enough, during the entire nearly four year period this entire case had fallen under the radar scope of everyone except the ag's office and the tribes...nobody paid attention to it.. neither the press neither the governor's office...neither the newspapers, neither the lawyers, and with all due respect neither the legislators...

In 1973 in one of the I guess in retrospect amusing notes in history -- in 1973 the ag went to the legislature and asked for a special appropriation so we could hire outside council and special consultants and anthropologists and the legislature said nah there's nothing to this case you don't need it and denied us the appropriation, not amusing at the time I suppose its amusing in retrospect

in January 1976 I inherited the case from a colleague of mine that left the office and I think it's fair to say that all hell broke loose in the state of maine

The doj announced it intended to pursue the case against the state of maine and look into whether to sue others in the claim area

What followed over the course of the next six months to a year was a period of chaos unlike anything I'd ever seen before

There was a state bond issue that had to be withdrawn bc of doubts about the validity of the land owners in eastern maine

There was a bond issued by the maine munnie bond bank that had to be withdrawn so a number of munnie projects had to be canceled

The state bond rating was in some doubt for some period of time

Land sales came to a halt for some period of time in the claim area bc lawyers couldn't give clear title to land and wouldn't give title opinions that that the seller had title to the land being sold

And for a period of time this wasn't widely known publicly but the controller of the currency and the federal reserve were considering declaring all the banks in eastern maine insolvent -- it was known office and ag's office – not that we had the power to do anything about it -- and the reason they were threatening was they said the land in eastern maine was not owned by the people who lived on it and therefore all the mortgages which the banks held as security were potentially worthless

Fortunately in late 1976 –early 1977 two important things happened -- the tribes much to their everlasting credit announced and made it quite clear that their intention was only to seek money not to seek the return of land it was less clear as to how they felt about state land but it was certainly in respect to privately owned land they indicated they were not interested in throwing anybody off their land that was an extraordinary gesture in view of the enormous leverage they had by virtue of the existence of that claim and I think we're all forever indebted to them for that act of statesmanship

At same time president carter took an unusual action although he never took full credit for it -- I think sen muskie played a large behind the scenes role -- president carter announced the first of a series of special reps to look into the claim and then seek a resolution by settlement and fundamentally it was recognized from the beginning that the claim was if pressed simply too large to actually try -- it was a case of enormous proportions in terms of the parties and dealt with events that went back 200 --250 years ago which often the truth of which was lost in the mist of history

XXXX

Over the course of that period of time from 1976 to 1978 – 79 there was essentially a three way negotiation took place both privately and very publicly

They were in the papers all the time -- you couldn't get away from it there was that very public negotiation and there was a private negotiation...

And the big struggle was over how much money to be paid to the tribes to extinguish the land claims and whether the tribes could as a result of the settlement also achieve a land base and thirdly whether or not the state would participate in the money part of the deal

Ultimately, after all these pushing and tugging struggles pres carter announced in 1978 that the fedt gov would pay for the entire cost of the settlement and the tribes and the fed gov agreed on the figure of \$81 million in return for which two other elements were required -- one was the agreement by land owners to make available for purchase 150,00 acre of land – I'm not sure what the exact number was – but a land base to be purchased by the tribes from the settlement monies and an underlying jurisdictional – that is legal arrangement between the tribes and the state as to what laws would govern both the present reservation at the time and the land to be acquired

XXX

My role from 1975 when I inherited the case through 1978 -- which was in retrospect one of the luckiest things that ever happened to me in my entire life -- through 1978 when pres carter announced the agreement in principal was to direct the state's legal defense –we hired anthropologists, historians, some outside legal counsel (consultants?) to prepare a series of position papers which we gave to the doi ultimately to the president, to the governor, to themeeting with the sec of doi, the us ag, counsel to the president, ...

And finally to coordinate the efforts of the governor and the ag and their dealing with both the legislative delegation and the executive branches of the government

The focus of my legal work was on defending the lawsuit , understanding the legal claims, the basis for what of what defenses might exist assembling experts and examining core principles of Indian law as it applied in this country

the reason we were doing that was because as it became obvious to everyone the ultimate result of this was going to be a negotiated resolution and the state needed to have an understanding as to what the implications of such a resolution might be

as it happened the period from the 1950s to 1970s was a period to a fair degree of turmoil with respect to Indian land rights in the western states -- issues involving state taxation, sales taxation on Indian lands, the application of state environmental laws on Indian land, gambling, fishing rights. application of state criminal laws was all being litigated throughout the west

and at the risk of oversimplifying, the counts were uniformly holding that on tribal lands the states had no authority, that the tribes were in fact as a result of long law and a result of a series of congressional actions, sovereign. and states had no power

XXXX

add in the in 1960s and 1970s this was creating a lot more friction -- friction which has receded today -- but there were armed confrontations in the pacific northwest over fishing rights, there were states governors offices in some of the western states which were I think its fair to say outraged at what was happening at much of this litigation and it was a period of some degree of turmoil

In addition to that developing Indian law, two important cases were decided in the state of maine involving Indian rights in 1979 just as we were about to begin negotiations -- to resolve Indians issues and those cases were john bottomley vs. Passamaquoddy tribe and state of maine vs. dana and socabesin

john bottomley was a lawyer who had been hired by the Passamaquoddy tribe -- I don't remember exactly when it was -- but he claimed he had never been paid for his legal services and he brought a lawsuit in fed court and the fed court ended up holding that bottomley had no right to sue the tribe bc under the principle of sovereignty a contract with the tribe was only enforceable if it had been approve by the sec of the doi and since this contract had never been approved the bottomley case – whatever its merits – could not proceed forward

and second of all the case of state vs. dana and socebasin was a criminal case it was a prosecution for arson -- I think it dealt with arson of a tribal school on reservation lands....

they were convicted and appealed to maine supreme court - the maine supreme court held that the state had no authority to impose its law on tribal lands so the state as it now entered the negotiations was looking at both the body of law from the western states and also the decisions by the maine supreme court and developed the position through then governor Longley and later endorsed by then governor brennan --- and governor. Brennan as ag and later ag cohen that the state of maine would not buy into -- for better or worse, rightly or wrongly, depending on your point of view -- to a

system of legal relationships which would provide to the tribes of maine independent historical tribal sovereignty.

XXXX

That was the position of the state of maine

Now mind you, at this point we had an agreement in principle between the president and the tribes in the state if main that the fed gov would pay \$81 million.... But the feds made it clear that, look, state and tribes, unless you work out, reach a common understanding about this jurisdictional issue we're not going to fund \$81 million – that's up to the two of you to work out--you negotiate it, and when you've negotiated it come back to us and we'll appropriate \$81 million to pay the tribes and extinguish the claim

what followed was 18 months of very complicated and highly detailed negotiations -- as I said the tribes were represented by the ten tribal members plus their counsel and on our side of the table in most instances was just dick cohen and my self

at first the parties were far apart -- we had diametrically opposed views of sovereignty and one would have thought from those first conversations that it was an impasse that would never be broken

I must say however that even through those most difficult times the tenor of the discussions was extraordinarily civil

And I know for the tribes that this was a matter of great emotion and I did then and I do now again give them extraordinary credit for the credit for the decency with which they approached those negotiations

as time passed in those negotiations what we found was the parties were able to get past what I might for sake of shorthand call slogans -- we began to tease apart the notion of sovereignty on both sides of the table, to drill down into what each party really was concerned about what were the elements of sovereignty that the tribe really felt essential and what were the elements of sovereignty that the state ultimately could not live with?

and we began to explore whether or not we could divest ourselves of that term and look at the real underlying authority issues that we were concerned about and put those in writing and reach an agreement on that basis

throughout that entire process the governor of maine was fully informed of what was going on

my task on a regular basis was to prepare a briefing memorandum for our team for each session in which I would go through all the issues on the table, outline for both the ag and the gov the parties respective positions on that issue, outline then a series of alternative negotiation positions we might take and then recommend a

decision and that was used as a template for each of our negotiation sessions and then after I would prepare a post negotiation report for the gov and ag and that's how we proceeded through this 18 month period

As a result of that -- and my memory's not clear on all the details of how we progressed -- but we did arrive at what I thought then and still think now were some truly unique resolutions of some very difficult issues

when you go back and read the maine implementation act you'll see how we resolved different issues with respect to of hunting and fishing rights in which almost exclusive authority was given to tribes subject only to a state override if by some unforeseeable circumstance the state felt the tribes were not acting responsibly

there was the creation of tribal courts -- something to which the state would never have agreed to at the outset of negotiations -- we came up with -- and I honestly don't remember whose idea it was I like to think it was mine in retrospect -- the creation of mitsc -- we dealt with issue of taxation and most importantly we came up with this idea of what's been called and I guess is now currently referred to as the municipal model

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I do seem to have a recollection that that was my idea because I took some considerable pride in it at the time

the idea was not to make the tribes municipalities like cities and towns but to use the idea of municipal powers as a way of identifying those sovereign powers which the tribe would have

now this was shortly after the maine constitution had been enacted to create home rule for municipalities which says essentially that municipalities -- towns and cities -- have all those powers, has every power, unless its been taken away or preempted by the state

xxx

so as we talked it through in great detail -- it was at this point we hired paul Frinsko ? -- he was the foremost municipal lawyer in the state of maine -- if memory serves he even sat in on some negotiations -- we talked about what that meant and what the tribes could do and we talked through the fact that the tribes had the authority to manage their own land, run their own schools, zone their own lands, tax or not tax as they chose, exercise environmental regulations, have their own police and fire department, manage their own roads, run health clinics--in short everything a town could do without being called a town--that was the model

the only limitation was that state laws would still apply so that, by way of example, a major industrial projects or commercial projects on tribal land would still be subject to the site location act, air and water pollution which might emanate from an industrial project on tribal lands would be subject to state regulation

so that the overlay was that state law would apply but that the tribes would have sovereignty on their own lands to the extent that a town did.

I would say that at the end of the day the deal was one in which nobody thought that they got everything they wanted but that everybody thought that they got what was reasonable and that it represented a fair accommodation of interests and avoided the use of terms which were hot buttons in the world of state -indian relationships

I gather I confess I have not followed it terribly closely bc in some respects it was also a difficult time for me – I gather that some folks among the tribes are not happy with the way in which the jurisdictional arrangement now works and I guess I have to leave it to others to figure out why bc I'm not doing what you're doing I'm not a member of the tribe I don't live with the system of laws that we agreed to afford them

But at the same time I have to say that at the time everyone who looked at this viewed this as an extremely creative solution to what would otherwise have been an impossible impasse and that everybody who spoke to it both before the maine legislature and the special committee before the us senate spoke in favor of it.

Indeed I think its fair to say that the bia had more concerns about the agreement than the tribes did because when the legislation reached congress the bia actually had objections to provisions the parties had already agreed to and at one point the bia almost blocked the deal -- the bia you have to understand has a special relationship with the tribe by virtue of federal Indian law -- they actually have a trust responsibility and they exercise it diligently -- ultimately the bia came to be persuaded that this was a responsible and reasonable deal and they gave their seal of approval to it.

At the time this was viewed as a great resolution --- we went to the white house I remember going to the Roosevelt room for the signing – tribal representatives were there and there was a great hope at the time that the injection of \$81 million to the tribes plus federal recognition and all the financial benefits that would come with that plus the fact that the tribes under the deal would have all the same financial benefits a town would get from the state government...in other words any monies that would flow to local communities for schools, they would b entitled to on the same formula, roads, in other words any other state benefit that existed for the benefit of a municipality for the first would flow to Indian tribes that had never been the case before ...

tom tureen -- I remember jokingly saying at the end of all this that because there was such hope and good feelings about all this that tom tureen hoped at one that if all worked out right the tribes would prosper and all become republicans

I don't know if the lack of full traditional sovereignty has been a bar to economic success of the tribes – I have an opinion about that but I guess its not my place to offer that opinion here.

I will say that the way in which we structured this settlement gave the tribes and currently enables them to have all of the tools that any other town and municipality has for economic development to create industrial parks and in fact have some tools which towns don't have because the tribes as I understand currently don't impose any local property tax, which is a great incentive for one if they're inclined to do so to locate a business there

I don't know what's happened to change the view of that -- I don't know how persuasive that that changed view is -- I leave it up to all of you to address the difficult and sensitive issues on a going forward basis as to what you think is the right solution -- I know it's a difficult task -- I respect everybody on both sides of the table and I certainly wish you the best and I'm happy to answer questions...

**Tim Woodcock presentation Nov. 19, 2007
Tribal State Work Group, Augusta, Maine**

Thank you very much -- I'm very pleased to be here today -- I'd like to commend you all for having formed this comment because like John over the years I've become somewhat distant from the settlement act and I know in some respects it has proved to be a trial

Let me give you a little bit of background on me and my involvement in some respect I have two phases in which I was exposed to the settlement act

I was on the personal staff of Sen. Bill Cohen starting Jan 1979 and like a lot of people on legislative staffs had a potpourri of issues none of which involved Indian affairs

Bill Cohen had been appointed and when he got to the Senate Indian Affairs Committee -- it was then the Select Committee on Indian Affairs -- it had been created by the Senate in response to the recommendation of the American Indian Policy Review Commission which was a wide ranging review of federal Indian policy that had been initiated in the 1970s . . . in the series of very significant recommendation

I went up to the Senate Indian Affairs Committee in March of 1980 and we had been receiving periodic reports from sometimes the tribes sometimes the state as to their progress in the negotiations toward a settlement and it seemed almost as though they reached their agreement at the time I showed up on the Committee which meant that I went from what was a fairly -- I won't say sleepy committee but it was not quite as energetic as it was about to become -- so I arrived then and the next thing I knew was Tom Tureen, John Paterson and . . . walking through the door with opposite (opposing?) legislation . . .

Now John has said and this is I think is an important fact to keep in mind that the parties worked through from my observation a very difficult process to come up with the settlement agreement -- the two-part agreement known now as the Maine Indian Claims Settlement and the Maine Implementing Act -- and I remember as clear as day Tom Tureen coming through the door and insisting as John said a few minutes after he got there here's the legislation, you can't change a word.

Well, that actually is in the spirit of the settlement of civil cases and you will find lawyers and the parties who fight hammer and tongs over issues and once they reach agreement on a settlement even though they might not be happy with all the terms of it they will stand up for that settlement and I think for both state and the tribes adhering to the letter of the settlement, to see it as implemented was a mark of honor

Now from my perspective, there was a point at which John and the tribal members who were involved in those negotiations -- correct me on this -- I have the impression that the federal government, that is to say, the executive branch was involved in these negotiations but then for a period of time they were not involved and I got the impression from the people at the DOI that there were a lot of the details of the settlement they were not familiar with and I can talk about those as we get into this further...

And I should add parenthetically that I note that I was billed in the press release as representing the federal perspective. It's really a very complicated perspective. I can offer you I think some insight into the congressional side of it -- I certainly can't speak to the executive branch although I will say that there is a copious testimony both in the hearings of the select committee on Indian affairs as well as the house interior affairs committee that sets forth the view of the exec branch and by that there are many, many submissions that the exec branch agency -- typically the doi/bia made on this that should shed light on their perspective

The committee I was one had five members -- of which I was a staff member, I should say. -- the special counsel on that committee was Peter Taylor.....

Now I might add that John said he was 30 years old

John has gone over the major elements of the act as introduced there are a couple of historical footnotes that I think are important for everybody to understand

This settlement act was first proposed in March 1979 the Maine implementing act came before the Maine legislature in late March - early April of 1980 and enacted quite rapidly

at that point the senior senator for Maine was Edward Muskie and events half a world away were about to change that in April of 1980 the U.S. attempted to rescue the hostages in Iran in Desert One. . . and that failed mission led to the resignation of Cyrus Vance, the Sec of State the appointment in his place of Senator Muskie

Sen Muskie went off to the State Department and the Judge George Mitchell was appointed to take his place Bill Cohen then became the senior member of the delegation and George Mitchell .. came to work with us on this I have to tell you that from my perspective both Sen Mitchell and Sen Cohen worked extraordinarily well together on this matter and it really was another model of which we often see in Maine of bipartisan cooperation on a very significant issue

I will also say that Judge, then Sen, Mitchell at various points became very deeply involved in the working out of impasses in the legislation I would say particularly as we got into the hot summer months the resolution of how state funding to the tribes in to the extent that they were taking on municipal status and federal funding would interact

There was a point at which it looked as though as John said the settlement might come a cropper as far as the BIA was concerned and the significant issues on the part of the BIA was how the federal government funding would interact with state funding for such matters as education, public works and so on

The other matter was very I think important to the parties at the time was the question of timing the failed effort to rescue the hostages in Iran had weakened the Carter presidency there was I think a general perception that this president might not survive the November election

There was the general impression that this presidency might not survive the November general elections there was the general impression that the Reagan presidency if that was what was to be might not be as receptive to this kind of settlement and we might have to go back to the drawing board and I can say that probably was true and I can give you some...proposed settlement evidence that that was in fact the case as I stated on the Indian affairs committee for the 97th congress and was involved among other things in the legislation which passed to resolve the claims of the Mashantucket Pequots in Connecticut

Timing was an issue in this particular proposal the congressional process that we followed was that we had hearings two days of hearing on July 1 and 2, 1980 they were chaired for the most part by Sen Cohen and Sen Melcher who was the chair of the committee came in from time to time but this was considered pretty much a maine issue Sen Mitchell was there throughout and we had a wide array of opinions that were offered and we did come up with a very extensive hearing record supplemented by very lengthy volume of written submissions

In fact I was looking at it the other day and I realized that Donna Loring who was with Central Maine Indian Association at that point had made a submission into the record regarding the rights of off reservation Indians

Notwithstanding the determination of the state and the tribes to stand as one on no changes in the legislation Congress did make changes in the legislation

the changes that were made in the legislation were made with the agreement of the parties through a series of rather intense and detailed negotiations some of them had to do with the funding mechanism some of them had to do with language that had been included in the original bill, which was known as S2829 in the Senate, on how general federal Indian law was to be treated in Maine and it was a very significant revision of that language -- a revision which favored the tribal perspective which I'll be happy to describe at some point

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The bill was marked up in September 1980 on the Senate side it went to the House the House passed it -- it went to the president, the president signed it as John said in the Roosevelt Room in a ceremony on October 10, 1980

The major points to keep in mind I'll say this I guess until I'm blue in the face this was a settlement....this was a settlement of a legal dispute it is very easy after a settlement has been reached to second guess the people who have settled

from my perspective all the parties to the settlement and **this was a three sovereign settlement three categories of sovereign** -- the tribes, the state and the USA -- the USA was as much a party to this settlement as the tribes and as the state was and this has always been a three sovereign settlement

The parties had to come to Congress to get his settlement approved bc as John said Congress has plenary powers in Indian affairs and it has that power under the Constitution under what

is called the Indian commerce clause that's the same commerce clause that we're familiar with that allows congress to regulate among the states and also allows congress to regulate trade between the united states and the Indian tribes it has been interpreted by the courts as plenary, meaning undiluted and unlimited which is probably isn't correct, but it's very closest

I won't go through the amounts of money that were made available there was \$54.5 millions for the acquisition of land.. \$27 millions in a trust fund to be divided between the Penobscot and the Passamaquoddy

And I might add at this point because I always felt very strongly about this The Houlton band of Maliseet Indian was a little bit of a latecomer to the negotiations and they came up to the committee and it seemed to me at the time that they had come too late that the train had left the station and that was just a personal impression on my part they were very ably represented by an attorney in Washington named lee chambers and they ended up being included in the settlement in large part because of the great heartedness of the Penobscot and Passamaquoddy tribes who basically made a portion of the settlement that they had reserved initially for themselves available to them

that was the critical point at which allowed congress to move forward without having to consider enlarging the authorization of the settlement and as everybody listened to the presentation made by reed and the houlton band leadership the logic of including them became even greater

The Micmac tribe was not yet really organized to mount that kind of effort at that point and later on when Micmac proposed they too should have roughly equivalent status that was a good idea and I supported it and I was pleased to see it happen although it was about a nine years wait for the Micmac tribe

As john has said the congressional legislation in its own right created a framework for this settlement it also ratified and approved the mia and it also ratified and **approved and sanctioned agreements prospectively that the state and tribes might make respecting jurisdiction and other important issues that otherwise you might have to go to congress to get approval for so you have that authority in advance**

My impression at the time . . . at the time I was extraordinarily impressed with the relationship that had developed between the state representatives and the tribal representative and their counsel in the course of negotiations

And I recognized that the micsa and the mia might well just be the beginning of ongoing relationship that might well have a considerable amount of dynamism in it and it might well be revisited from time to time to be adjusted

there was a mechanism for that to happen and I have to say in **retrospect it's been a surprise to me that it really hasn't been amended at some point but** I also recognize certainly that these are knotty issues these are difficult issues particularly when you speak of jurisdiction --- and from my second phase perspective which is as the staff director of the

Indian affairs committee for the 97th congress and from a perspective as it turned out of three and a half years of doing nothing but federal Indian legislation, federal Indian law I saw a wide diversity in the field of Indian affairs

john has used the phrase “old traditional sovereignty” --- I would submit to you there probably is no such thing as old traditional sovereignty in Indian country you see a lot of different formulas

in the mid west you see reservations that have gone through the allotment process which created a jurisdictional nightmare out there

in Alaska you have tribes that have taken on a corporate identity

in California the tribes have a unique relationship there under the federal government

and I will say that the experience of the united states indian affairs is hardly what you'd call unalloyed

Indian tribes because of the relationship with the united states have at times gone through periods where they've really been the subject of social experimentation in terms of legislation --- the allotment era was one example of that where the sense was give everybody some land and once we've given out some land we'll take the rest of it ourselves -- that being the dominant society -- and then everyone will be independent farmers that was one very, very attractive idea to the government at one point

And it had been preceded by the Indian removal era -- an extraordinary time in our country's history where we simply uprooted primarily the five civilized tribes but not only them what were called the five civilized tribes in the south -- and moved them out to Indian territory we now know as Oklahoma and promised never, ever would white people settle in the Indian territory --- all the way forward to the indian reorganization of the 1930s when tribal government was encouraged and moving forward to the termination era of the 1950s where the pervading thought was “to get out of the Indian business” on the part of the federal government and it is no wonder that tribal members who have a commitment to continuity of community have found it extraordinarily difficult at times to manage the affairs of their these unique and valuable communities when subject to such sometimes well intentioned but jarring changes in policy

With respect to the issue of sovereignty itself its a difficult issue ---my own perspective on it, and I think the law supports me on this, is that tribal sovereignty is exercised by the tribes present in this gathering, predates the united states, it does not come from the united states, it does not come from the state of Maine --- it comes from those communities as preexisting entities, communities with political dimensions

As far back as the Cherokee nation decision in Wooster vs. Georgia the us supreme court has recognized that Indian tribes maintain this residual sovereignty and the question has always been what is the end of that authority and that is always the issue

And I would disagree somewhat with John in his description of the array of court cases that were decided in the 1970s there were a number of court cases decided by the US Supreme Court in the 1970s that went against tribal sovereignty.

There was one in the area...there was certainly the famous *Bolton* decision...an interpretation of the treaty out in Washington. . . . There was a decision on the other hand that came out of the same state involving the ??? tribe that was a blow to tribal ability to control natural resources... there was ?? vs., the *Squamish* tribe...diminished the validity of tribal authorities to regulate and control criminal conduct on their reservations by non tribal members....

And so what you had at the time was a series of decisions in an area that has been to an extraordinary degree governed by court decisions that was not itself pointing in clear directions.

And I think for that reason both the tribes and the state felt as though this was the issue to compromise and I would say beyond that there was I think a sense of responsibility on the part of those people who negotiated these agreements to the communities themselves and to the larger community of Maine because those of us who were observers will recognize it was really an extraordinary level of animosity that grew out of these claims and that needed to be addressed.

I'm like John in the sense that I don't really have any ready made solutions for you – I think it is remarkable that you've come together and I hope that you will find ways to fine tune mechanisms that we created and enacted into law 27 years ago to better serve the tribal interests here and the people of Maine.

LIBBY MITCHELL Thank you both beyond words... I'm just sorry we didn't have Maine public broadcasting in here --- this should be a documentary and I really mean that I think someone really needs to capture the wisdom. . . . The elders have spoken to us in the same tones .and the same experience...it's been a remarkable thing and it's going to leave us . . . We've got to capture it bc I think you give us insights and this is just a long winded way of saying how grateful we are that you have spent your time here This is time for members of the committee to talk with you . . .

Donald Soctomah rep for Passamaquoddy

I'd like to thank you--- that was a great presentation its always been told to me – I was a youngster when the land claim was being negotiated—that this settlement is an evolving growing (thing) it's not stagnant --- as things change for the tribes new things will be added on Is that a true or is everything written down on the settlement, is that cemented in never to be changed (language) because my understanding of it is that it's an evolving thing -- that's why MITSIC was put together to come up and address new issues that concerned the tribes

John Paterson it's evolving to the extent the parties had agreed to have it evolve --- that was the thing that was truly unique to this settlement -- that the federal government

delegated back to the state and the tribes the authority to make changes to the deal if they agree upon it without having to go back to congress ---Tim will correct me on this because he's more conversant on principles of Indian law that I'm missing --- that there's nothing like it that I know of and to that extent I think the answer is yes it is evolving to the extent that parties want it to evolve

Tom Woodcock

I agree with that -- I think it was an unique mechanism at the time it was adopted... the prospective approval of the congress to agree that the state and the tribe might reach ...

I should add parenthetically one of the reasons I came away thinking that this was going to be more of an evolving document than it proved to be is that going down the stretch in the negotiations the bill as introduced and as firmly and fervently defended by both parties, as it was, provided that the laws of the united state that accorded a special status to Indians or indian tribes would not apply in Maine --- that is the way the law was introduced --

That is not the way the law ended up.

The law ended up providing that laws that generally apply in indian territory would apply in Maine and there was that part of the bill then was written with a condition that it would not affect civil, criminal and regulatory jurisdiction in the state of Maine --- that could only happen because the state agreed to allow it to happen because otherwise the bill was written that general federal Indian federal law didn't apply in Maine, and that concession occurred in August and September in 1980 and there are two provisions in the current act that reflect that change --- one is the provision I just quoted -- that the general federal Indian law does apply in Maine except to the extent it would affect the civil, criminal or regulatory jurisdiction of the state of Maine and the other provision is that no law passed by Congress that would affect the civil, criminal or regulatory jurisdiction of the state of Maine will apply in Maine unless Congress specifically says so.

Those two section of the bill --- I know there has been some controversy over them -- they were not in the original bill but the reason they were in the bill as enacted was because the state conceded to delete the language that provided for a general exclusion of general Indian law --- to me that concession made on the part of the state was the harbinger of what I thought would be a more flexible approach over the years to proposals made by the tribes

LIBBY MITCHELL There've been no changes to the document?

(Paul Bisulca???) ---- There's been no amendment to the legislation that I know of

JDK Actually the Maine legislature amended the Maine implementing last session to add the Houlton band of Maliseet to it..

.....
Libby Mitchell the issues that go to sovereignty and some of these bigger issues have not been amended?

? --- I'm not aware of any

John Paterson -oh one other thing I should add --- -I forgot to mention the fact that the settlement involved the acquisition of land by the tribes but I thought to give the land owners due credit for participating in this --- one of the elements of the deal was that the tribes were able to use \$54 million to purchase land -- in order to make that happen we had to find landowners willing to sell land in areas of the state which were the tribes interested in acquiring in and were willing to purchase for a price which was within the \$54 million limit and to the great credit to a couple of the companies . – Dead River ?? I think was one of the major participants -- and the effort of ...???, an attorney at Pierce Atwood who has since died -- played a major behind the scenes role so in addition to negotiating with the state the tribes had separate negotiations with the land owners to identify 150,000 acres of land and those parcels of land were actually written into the legislation , the federal legislation -- the state legislation authorized them to be acquired and then to be covered by this legal arrangement that the tribes had agreed to so I apologize to the landowners for not having given them due credit for all of this

Libby MITCHELL (to Tim) you said a couple of times three sovereigns.... what did the framers of this agreement that was negotiated in congress have in mind for dispute resolution among the sovereigns?

Tim Woodcock my impression was the state was primarily interested in jurisdictional issues and the Maine implementing act which is quite detailed basically expressed the state's position

I don't think the state in any wanted to stand in the way of or frankly even be involved necessarily in the provision of general services to the Indian tribes and that is once the funding formula was settled

the remaining relationship is between the USA and the tribes and that relationship exists with the BIA primarily -- I haven't actually had much of an opportunity to see that in operation and I certainly would defer to the tribal members on how that relationship has been experienced but I don't think for the most part the state has had a lot of involvement -- I could be wrong but I don't think so

John Paterson are you talking about dispute between the tribes and the state over the...

Libby Mitchell The tribes and the state -- that's certainly something that's come up often...

John Paterson I think we did the best we could but we didn't come up with a real resolution ---we created mitsc with the idea that...

Libby Mitchell tell us what you envisioned with mitsc?

John Paterson we didn't exactly know the purpose behind it. -- the idea was to have a forum it had some discrete powers it had some specific powers with respect to fishing and gaming regulation on defined territories -- beyond that I think the goal was to have a forum in which issues could be aired --- at the time we created it it was evenly divided between the tribal and state representatives with a chair person who I think initially was to be a retired justice of the state supreme court -- that was the way it was originally crafted -- it was changed and that might have been an amendment to the act --I don't know how your chair is selected now ..

The idea was to try and find somebody who might be viewed as being a kind of neutral chair so that ties could be broken I haven't looked at the act in a long time

in the end there was no dispute resolution mechanism, that is a party or a body with the authority to make decisions, to make reconciliation -- it was intended to be a forum in which agreements could be reached and then go back to the legislature and the tribes, and to recommend that they both adopt -- the tribes would have to adopt the change to the legislation and the legislature would do it too -- it was-- we didn't view it as an essential piece of a bill that there had to be a dispute resolution mechanism or body --we viewed this as more that as being helpful to have an advisory body and some method of ongoing communication in a formalized way

Richard Blanchard I'm having this problem with this municipality issue -- what was the -- why the term was brought up and how much impact ok? is put into that term municipality? Were you creating the same type of laws for the tribes as you would have given the town? Was that the terminology you used for that reason?

John Paterson well, first of all the legislation doesn't call it a municipality -- the mia says they have all the rights, powers, duties, and obligations of municipalities and we analyzed that together with the tribes -- we said, look, municipalities have a form of sovereignty -- they can do their own zoning, they elect their own elected officials and, as to that, the legislation says the tribes can have whatever form of government they want -- the mia says that -- they can have their own police and fire and run their own road and run their own schools and they own all the land. -- they can manage the land, they can manage the fish and wildlife. -- in some respects they have more authority than municipalities -- we didn't call them towns but we wanted to have some way of identifying a body of rights, a group of rights that would define the sovereignty that these tribes had

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Sovereignty is not a concept which is immutable where we say sovereignty and everybody know what that means -- Tim described there are different kinds of sovereignty when you're in the mid-west or in California or Alaska...

So we thought what are we talking about and as we got away from the use of that term -- we talked more about in terms of real powers and the things we tried to do and at the time we agreed that what a municipality could do would be an agreed upon definition of the group of rights that would be in this basket that the tribes would have

Just like a town could create an industrial park, the tribes could -- just like a town could decide how to zone, the tribes could, just like a city could have its own police and fire departments, run its own schools, run its own school committee, the tribes could do likewise -- that was widely used that concept but we didn't want to call them towns
XXXXX

Butch Phillips thank you for the great. . . I'd like to say that during the negotiations you kind of alluded to ag dick Cohen that he recognized and sympathized with the tribes in trying to exercise their self-government without interference of the state

And the negotiators for the tribes were treated with great respect and honor, and we in turn had a high respect for the ag and his office during negotiations and I think all the negotiators felt that way and it made things a little bit easier for us while on the outside there was an awful lot of animosity against the tribes for bringing the suit and also within the tribes we were taking a lot of heat from out tribal member for negotiation the settlement

I'd like to clarify a little bit on where mitsc came from and. . . you're ego and you claim that mitsc was your idea -- I have to disagree

How mitsc came about -- we were in disagreement on fishing rights on waters that border both the state and tribal lands and the upcoming Indian territory, the newly acquired land and we kicked this around for quite some time and andy aikens (?) who was the chairman of our negotiations committee made the recommendation -- he said let's form a commission or committee of state and tribal people to look at these disputes on these waters and from there it expanded -- this commission would be the liaison between the tribes and the state and they would listen to disputes and try to come up with some resolutions and if you recall we had an equal number of tribal members and state people and the chairman would be a retired judge -- big mistake -- I was the first acting chairman of that committee and my duty was to select a retired judge -- it was a big mistake -- and that was changed soon thereafter...

You also stated, john, that you thought that the bia was more concerned with the settlement and proposal than the tribes --- I disagree --- although you didn't hear us complain about the settlement and we negotiated and so forth but truth be known that our tribal al members were very involved and they were very knowledgeable and there was great concerns on the part of our of tribal members on what we were doing and what the proposal language was an s so forth through the end and as a matter of fact it still exists today

John ... I do remember in the senate report there was a separate letter to the sec of the interior which they express reservations about certain parts of the act and indicated that there'd been some adjustments made that dissatisfied them so some of the technical changes that Tim had described resulted from concerns from the bia in the department of the

interior... so that's what I was thinking about... obviously I was not privy to what was going on with tribal member s

Butch Phillips We never gave that impression

John Paterson If only I'd known that I could have used that against you (ha ha)

Butch Phillips And also you said you didn't think the tribes are happy today with the way things are going and that is true -- and that's why were here today

But I want to get back to the municipality language, the internal tribal mater and that's exactly why we're here today

Before the negotiations started the tribes had a goal -- to negotiate an out of court settlement -- you know, we made the point that this was about our return of land, for damages, for the loss of those lands, and for some wrong doing on the part of the state, and to gain fed rec, but the unstated goal was to negotiate an out of court settlement

two of the major concerns of ours as far as the negotiated settlement was concerned -- and I stated this at the opening statement here t the last meeting -- was that the state was very adamant about not contributing monetarily to the settlement

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Governor Brennan -- part of his campaign pledge was “not an inch of land, not a penny of money” to be contributed to us by the state

So we didn't want to let the state off, so that's how the municipality thing came on -- that we wanted the services that you mentioned provided to the towns and cities to be applied to the tribes as a municipality

we did not give up our nationhood -- we did not become a municipality -- we just wanted the services of a municipality -- that's why subsection 6206 was written the way it was

the other thing that was... this is the most imprint part of the negotiated settlement as far as the tribes are concerned -- was that we would exercise self government without interference of the state of Maine as they had controlled our lives for the last 160 years, all right? We said that was never, ever going to happen again and we were satisfied that when 6206 was written that it answered those concerns of municipality, and the control of our internal tribal matters, ok? and the state and the federal officials testified to that not only the legislature as you said, hearings as well, and we believed that as negotiators and we sold that to our people -- not all agreed but the majority voted for the settlement -- that was a very imprint part of the settlement for us and that has come back to haunt us in the last decade or so by the court decisions, and that's why we're here today -- so we've got to keep that in mind that the most important of this whole discussion is the municipality clause and internal tribal affairs

Tim Woodcock I just want to point out what butch has said is not only correct about municipal status but it's also backed up in the report that the senate committee issued on this -- we solicited, I think actually it was the interior department solicited perspectives on the settlement legislation as reported and tom tureen wrote a letter to sec of interior -- it was sept 6 1980 in which he talked about the financial advantages to the tribes as having their **municipal equivalent status**

in other words, as far as the state was concerned for funding purposes the tribes would be **seen as having municipal status and would get state support because of that status** and that was seen as a positive thing for the tribes

this is a little bit of a digression but I wanted to get back to chair's question about a dispute resolution mechanism -- If you are dealing with issues of enlarging tribal sovereignty beyond what is currently in the maine implementing act you are most likely like talking about some sort of (commensurate or procession ???) of state authority or potentially some sort of overlap of authority -- there really is no way to delegate a resolution of those kinds of issues to a dispute resolution mechanism because ultimately any adjustment in sovereignty on either side is going to have to be ratified by the legislature and by the tribal governments so what you are left with is -- it sounds as though the mechanism has not worked well-- what you really are left with is a mechanism that allows the tribes and the state to come to a common ground on those issues so they can then go to the policy making bodies where the authority resides and formalize those agreements but you can never really transfer that power through a dispute resolution mechanism

LIBBY MITCHELL some of the concerns about environmental law as has been decided in the federal courts concerning this statement...says ..(reads) . “blocked two maine tribes from regulating water quality on their reservations” So that we’re not talking around one another...

JOHN Paterson I've often thought that some of the terms we use in these discussions get in the way of real analysis -- I don't disagree with anything that butch said --- I think the terms that get in the way are the terms of sovereignty and internal affairs because they're not self-defining terms -- different en people have different views as to what those terms mean

Sovereignty is like --- it's not a term which has a precise meaning -- I mean, my town of Freeport can zone itself- so in that respect it has some sovereignty, it's not a nation but it has a right

I always felt it's better to talk about what it is you really want to do, what the elements are of sovereignty and what it is the state doesn't want to have happen rather than talk in a term that doesn't have universal meaning

As Tim explained tribes in Indiana are sovereign but they have a different kind of sovereignty than tribes in Arizona or Alaska or California – it's not a singular definition and I think it gets in the way of analyzing what the tribes really want to be able to do and it may be more productive for this committee to talk about what do we really want to do that we can't do and what does the state have concerns about if we do that?

The same is true with internal affairs --- I think we did the best we could under the circumstances – and I think disputes have arisen about the meaning of internal affairs which nobody anticipated back then --I mean, I can't tell you I knew in its entirety what internal tribal affairs mean – I certainly knew it meant deciding who was a member of the tribe and your method of governance -- beyond that I don't think -- we didn't really discuss it beyond that as I recall, I'm not sure we really knew...there isn't... when you draft any contract or whether you draft a piece of legislation under these circumstances that arise down the road, which you simply can't anticipate at the time and which if you thought about you might have concluded but you didn't at the time.

I think its far more productive if you're going to have a discussion of internal tribal affairs to tease it apart and say what is it that tribes really want to do that the case thus far doesn't let us do and get away from the phrase itself – I think it's a bar to real analysis – that would be my recommendation to you – talk about real problems . .

LIBBY MITCHELL well. I just threw that to Tim, I'll throw it back to you -- regulating water quality on the reservation – are you looking at that in how this was drafted like you would in a municipality would regulate water only so far because state rules trump it? I mean, isn't that part of what we've been talking around?

JOHN PATERSON I think before I would speak I would want to read that case—I'm not sufficiently conversant with the case to understand what it's import was

LIBBY MITCHELL ok I joist take that as an example--- the tribes can tell you a whole lot more about it than I can but there's been several examples like that when the tribes have made certain decisions and each time they go into the federal court and the state always prevails. Do you understand what I'm getting at,, Tim?

TIM WOODCOCK well I certainly understand the problem...and this gets back to the provision of the act that I mentioned a little while ago -- under the act section 1725 -- I think it's now 1725h -- what you see in that section of the act is very unusual -- it really is a very unique expression of tribal and state jurisdiction – what happened when the Maine implementing act was adopted was the tribe and state authority was defined to an extraordinary degree -- a great deal of the detail and part of that detail was done I think in recognition of what had become very divisive jurisdictional battles in other parts of the country and I recall reading several years ago tom tureen's testimony before the special legislative committee in which he said one of the things we'd like to avoid I the jurisdictional battles that are going on in indian country in the west

This did provide a great deal of detail to those arrangements -- in the senate report there is a discussion of how it's supposed to work and it is frankly described by the committee as innovative – it also a described by the committee as jurisdictional arrangement that was entitled to court respect

In other words, the traditional rules of construction that might govern some arrangement between another tribe and the usa would not apply here and that this arrangement was to be

given a broad construction by application and just so that it was very clear to any review in court how this arrangement was supposed to work, the senate committee report gave an example of fairly recent legislation that would not apply to Maine under this agreement --

I'll give you a little bit of background on this -- beginning about 1970 in first term of Nixon administration --and for those of you who are not familiar with this part of the Nixon administration there are many in indian country who revere president Nixon because as odd as it may sound he had a very expansive view expansive or tribal relations and united states relationship to the tribes and some have told me it goes back to his having been brought up as a Quaker, but in any event I think many Indians look back at Nixon administration as having been a good one for indian affairs -- ..

About that time congress began recognizing tribal governments as unique forms of government deserving to be recognized in comprehensive federal legislation that affected communities, affected states, and they began to write into the legislation, for example the Clean Air Act, a role for tribal government -- in the senate committee report, the Clean Air Act was given as an example of the kind of act that would affect the criminal, civil and regulatory jurisdiction of the state of Maine and therefore the reference to tribes that would otherwise apply in Maine by that law of general of act authority would not apply in Maine, and the only way it would apply in Maine is if congress went back and amended the Clean Air Act to say that the special tribal status that's recognized and is of general applicability throughout the united states also applies to the Maine Indian tribes and the same thing then would be true of the Clean Water Act

--and so that's where the differentiation lies, that you have a very complex detailed jurisdictional relationship that's been adopted in the Maine Implementing Act and for both past and prospective federal legislation that could affect or preempt the civil, criminal or regulatory jurisdiction of the state of Maine, the only way it will apply in is if congress says in addition to this applying to indian tribes and nations that it also applies to indian tribes in Maine

John Paterson I had a property law professor in law school and I remember him talking abut the concept of title to land and one of the principles that I learned from him is that the concept of title to land is not a singular concept -- as he said title to land is a bundle of rights and if you tell somebody you have title to land that doesn't necessarily convey the same thing to the same listener --for example, you can have title to land but not that conveyed the mineral rights to somebody else or you can have title to land and conveyed to somebody else a conservation easement so you have limitation to how you develop it or can have title to land but somebody have an easement over it -- the same is true it seems to me with the concept of sovereignty -- it doesn't have at least to me a singular notion to it -- you have to get down to what specifically what powers does the tribe want to have that it does not have and would the state agree to that adjustment and the same is true to me with respect to internal tribal affairs -- even more so -- because that is the concept that I do not know if it's been defined anywhere -- there's been a lot of litigation about it and I don't know if the courts came have come up with a case anywhere which universally defines what that means...

we were acting creatively and doing the best we could .-- I think it's more productive to the tribes to say here's what we want to add . we want to make this specific, we want to make it concrete that this particular thing -- that the freedom of access law doesn't apply ,because that's an internal tribal affairs -- that there's something that we want to do that's highly private, say, get out of our business and we want t include that in our internal tribal affairs—I think that's a more specific and concrete and productive dialogue than talking about general concepts which have no universal definition and that's . . . if I were you that's the singular most important recommendation I can make to you – talk about the specific things, the specific powers that the tribe wants t be able to exercise that it can't now and then the state can have the dialogue that we don't want, that's going too far for us, we can't agree to that

we tried not talk about sovereignty in our negotiations but to talk about powers and that's why we used the municipal model because it carried with it a bunch of concrete powers –and to my way of viewing it and I may ?? disrespect or disagree with my friends among the tribes – the tribes did have sovereignty and do have sovereignty --the scope of that sovereignty is defined by that notion of powers the same as a municipality—that's not lack of sovereignty , that is sovereignty -- they have those **powers which are relegated** which they can exercise and nobody else –they can zone their own land, nobody else can do that --they can manage fish and wildlife -- they can up –they can what – I mean. within the scope of municipality, that's what they can do –they can run their fire department they can not have a fire department, they can decide how they're going to govern themselves -- all that are elements of sovereignty and if there are more that are desired the I think it's better to talk about those specifics

REP DEB SIMPSON For the purpose of anyone listening, hopefully not -- I just want to follow up on your statement because I ---this idea that we should look at just naming specific things, I think part of why we're here is that there are things already specifically named and if you want to go to the internal tribal matters that's already specifically named and so the tribes I'm certain believed that their meetings and their papers and . . . things were internal tribal matters but the state and the paper companies took them to court and proved in a court of law to someone's benefit that that was not the case, so how will they know in advance what it is that they already believed to be a power and right that they have..... **how do you know what you need to protect yourself from before it happens???**

JOHN PATERSON well, you didn't –and we were doing the best we could at the time --- when we -- **the definition of internal tribal affairs gave some examples but it was not meant to be the exclusive list of examples** -- they were the ones we could think of at the time –

if as it turns out some things have happened now that the tribes believe should have been included in as internal tribal affairs, for example, the freedom of access law should not apply to them, you can simply agree to make that amendment and to include that in the definition of internal tribal affairs on a going forward basis --

we honestly never talked about that – it certainly never crossed my mind that that was an issue of internal tribal affairs that we should have been discussing – it was never brought to the table – I don't know how we would have reacted to it at the time – but there were other

things like that that the tribes said look, we want to make it concrete, we want to make this list of what internal tribal affairs encompasses, I think that's a useful conversation to have

Tim Woodcock I think one of the issues that arose – and I'm speaking a little after the fact here –but you can see it in the Maine Implementing Act is that the tribes are constituted as political entities differently than the mechanisms that we have become used to – they act in a political capacity -- they act in a business capacity -- they can act in an environmental capacity and if you look through the law you'll see that it was recognized that there might instances in which the function of the tribe was largely as a commercial entity making commercial decisions --- and I can only say this being from the outside looking in from what I've seen the mia, the people who negotiated it would have a better reference point than I – but as I looked at the examples that were given following the reference to internal tribal matters, those were distinctly community and political in their nature

john has suggested that the list perhaps could be expanded -- I don't think it's surprising – I guess I would say as an attorney it's not surprising that if you have an undefined term like that and you follow it with a series of examples that a court would look at the examples as informing the court on the nature of the concept and I think that is what happened with those decisions

JIM SAPPIER a couple of things, one is that the settlement act was to be a model, a national model, if you recall, and when it was passed and started being applied there's no other tribe in the united stated that grabbed onto this model that I know of – ..

the second part of all this is we were told that federal law supersedes state law –that was a constant in the settlement in negotiation – federal law supersedes state law – it also said Penobscot, Passamaquoddy and Maliseet n would be receiving full benefit of federally recognized tribes – full benefits of a federally recognized tribe

just within that statement – full benefits of a federally recognized tribe -- you ran into criminal law and civil law ... because we contract all federal services on the reservation and in contracting all federal services that a federal employee would be providing on reservation --- they had the same federal criteria that applies to each one of the employees at Penobscot nation so they would be deemed federal employees based on federal law and regulation with regard to PL 93-638 which is contracting those services from interior , ihs, other federal programs. ..

so full benefits of a federally recognized tribe. . .it's weird -- we're having a hard time understanding how beneficial laws don't apply to us however, the laws that seem to suppress the tribes apply and I say that with regard to, oh, the department of labor passes a law of general applicability then it applies to us, compensation, discrimination, internal revenue service passed laws -- you know, congress passes a few thousand laws since 27 and so did the state legislature-- the state legislature passed a few thousand laws since then -- so why do the laws that suppress us apply, but the beneficial laws don't apply don't apply when we're supposed to be receiving the full benefits because we had deemed to //

I think I like your definition of municipality -- I don't think people understand that it's home rule -- it's not a city or a town, its home rule -- the tribe retains that power of home rule, not a municipality and not a town.

And that's not quite understood here and I think the ag's office should probably be told that periodically

In any case state laws applies -- when we looked at that immediately after the settlement act was passed we set up this committee to study and review all state laws so we went out and bought ourselves the mrsa -- we had a whole bunch of them you know how many there were back in 1980 --and so we had ... dept of trust department was responsible for looking at all these mrsa's and they go through them and go through them and were marking these laws up and marking these laws up because we have a process at Penobscot for accepting laws – it goes to the council, council sends it to a public hearing, public hearing then goes to general meeting, general meeting then applies and votes pro or against that law and also can amend it...

but some of these laws were ridiculous -- we called them the stupid man laws in those days -- for example, there was one law that we came across that said molesting lobsters --now there was this tribal guy looking at this law, do we accept it or do we reject it? well it came out that we had to get training in how to molest a lobster in order to apply the law – there's an absurdity there.

So we started looking at all these laws and we were three quarters of the way through the first book and then we said, how about this? why don't we just bag it up and ship it off into interior bia and say, these are the laws that apply, over a period of time we will accept or reject these state laws –that's how it was working – state law applies, because state law applies, however, it's got to go through penobscot's process of accepting law.

Now if the congress can pass 2000 laws of which all of the beneficial laws don't apply to Penobscot, Passamaquoddy and Maliseet, however, these laws that suppress you do, I'm wondering who's making that determination because nobody's been asking us ... but it appears that there's somebody in this state or somebody that 's really making this determination on our behalf -- in fact to a certain extent I think they're defining us – I don't even know what a Penobscot definition is anymore because somebody's defining who we are and we haven't participated in that over the last 27 years

The bolt ??? decision, do you recall, john, that when we were negotiating the settlement act we said because of ... going on in Washington stte, the ???doctirne and also the bolt decision had hit and if we proceeding any longer in trying to resolve that one issue – that one issue in the state of Maine was the Penobscot river, the st. croix, and a bunch of other rivers and waterways --- and we had a problem selling that would never be resolved until probably 2000 and so what we did is we said we'd do nothing the river -- rivers and waterways, we'd do nothing with them we'd leave them there, and we'd have to sit down and decide that later in the future –

you recall that because we talked about it in a meeting in Portland down there about 10 years ago I think – but it was true, because of bolt decision and ??.... and everything else going on up in Washington state and that decision said the Indians owned actually all the migrating fish, all the coho and salmon and all of them – and we didn't want to get into that ...

The was a meeting held though during negotiation down in washington and that was with a bia solicitor -- a little guy – Tim bowman?? And Taylor and tome and I remember there was a meeting and they were talking about something I cold never get a good handle on -- it was DOJ and bia discussion on something and we were told right after that again that federal law supersedes state law so there'd be no problem, no problem

and we ended up with something that really is , it's really, I say it's corrupted.-- . Somewhere the settlement act is corrupted. I don't think we've been full participants and nobody really listens to us when we say what the settlement act means and I really think we're at this point right now – we're trying to make changes – I really like your definition of municipality --I think that home rule is...that's what I recall it to be –home rule – it had nothing to do with towns or cities –

also for the schools we wanted title one funds out of education money, we wanted to sell bonds, we wanted all this other stuff that was going on, revenue sharing and something else, I recall,

LIBBY MITCHELL thank you very much if you'd like to make a couple of closing comments . . .

Tim Woodcock Just let me pick up on what you said. First, in some respect the MICSA did prove to be a model and in some respect it did not. The Rhode Island claims – the Narragansett claims -- that settlement came before this legislation went through and the MICSA -- I can tell you quite frankly it was a huge settlement compared to anything congress had seen out of the eastern indian land claims based on tom's theory of the non intercourse act – It was on a scale that congress had not seen before – and because of that and because of the promise that the settlement would probably result in the tribe's developing a very significant land base there was a lot of attention given to the jurisdictional issues and that was not true of the Narragansett settlement.

The story that I will not bore you with too much it was about a year or so later that the Mashantucket Pequot tribe came down to settle their case and their ability to do that was in large part made possible by the Penobscot tribe who provided them with lots of advice and assistance in their claims and their settlement as drafted has no reference to any state jurisdiction over the 800 acres that were supposed to be taken in trust – and I recall at one point talking to Terry Potroast ?(!) who was the aid to congressman Sam Gejdenson and I asked him, you don't have any provision for state jurisdiction over that land, is that what you want? He said well, I'll check it out, he came back and said well we talked to the attorney general and we don't care... now at that point, I said well, it's not for me to interfere in these settlements – if this is what people want, the state is big enough to stand up for its own

rights, and if they don't care it's not my business to say anything, and I didn't -- and I never have been down to Foxwoods but I feel like somehow in there somewhere there's a piece of me

The other thing I wanted to point out federal law does supersede. The Maine Implementing Act was adopted, ratified and approved and is effectively federal law and that's why it works the way it does – congress has the authority to do that

The last point I wanted to make and I'm really responding to Jim's comments here about the oppressive laws and the beneficial laws ---- the way the act exists right now, the federal laws that are passed that are not applicable to Maine are the ones that affect r preempt the civil, criminal or regulatory jurisdiction of Mine

There is not a similar provision in here that deals with the tribes – it doesn't say if federal laws are passed that affect or preempt the criminal, civil or regulatory jurisdiction of the Maine tribes they don't apply because it deals with preserving the jurisdictional agreement that is set forth in the Maine Implementing Act

That means if congress passes, let's say, a law that deal with federal Indian education programs they would apply to Maine without and further legislation being required, but what Jim is pointing out to me is something I would not have thought of but if labor comes up with some regulations that it passed that would limit tribal government they probably would apply to tribal government

In jurisdictional issues the devil is always in the details and I do think over 27 experience with this act if the tribes have issues with this act which they think are unfair and limiting their ability to fulfill their destiny and their obligations to their community then it's going to help you as legislators and I think the public has its own role in this at some point for those to be as well defined as they can be because jurisdictional issues are necessarily,,, they can create misunderstandings, they can be characterized unfairly -- so I would suggest more definition and more specificity so whatever the proposal might be it could be fully vetted

John Paterson when we signed the settle my kids were seven and eight and they knew I had something to do with Indians And I had to cancel a trip to Baxter park to go to Washington to negotiate something....about ten years later we were sitting at the dinner table and the subject of the Indian land claims case comes up --I don't know how--and during the course of the conversation and all of a sudden it occurs to my eight year old son was what I had been doing all these years was not what he thought I'd been doing -- he said you mean you didn't represent the Indians? And I said no. – he looked at me and said you ?

One other final observation, I think we took great pride in what we'd done... I know I speak for Dick Cohen – he was a wonderful guy etc etc

I know we all really thought we'd done a good thing because we'd helped participate in the creation legislation which in some measure – never perfectly, but in some measures helped to

right an old wrong -- we had created a piece of legislation which put words to the fact that it was righting an old wrong and it resulted in \$81 million to the tribes -- it resulted in 150,000 acres of a land base for the tribes and it hopefully -- we thought it was creating a mechanism which would so many of the problems that had permeated indian-state relationships throughout the rest of the country and I know even though we had been opponents in all of this, dick and I and I think I speak for everybody on both sides of the aisle in respect to the state and the federal government, really took pride that what we had done was good and that we had helped. . . but we had made a little piece of our world a little bit better.

I am sorry that in retrospect there has been so much litigation about it. I don't think anybody expected all that, least of all me, I never thought there'd be so much litigation, but I still do take pride in the fact that we created a mechanism which created this and you can't look at every state in the country that has some n mechanism in law to have a body like this and which has delegated to the state and the tribes to the power to rewrite themselves if they want to do it and to engage in trade offs –

maybe some of this deal the state doesn't like and maybe there is some tradeoffs to be had in all of this -- and the fact that there's still rubbing going on is not terribly surprising – I can't think of a deal that I've ever negotiated in my life in which somebody doesn't have disputes about it later on –that's just the nature of you can't predict everything for the future

but I think the fact that we're doing all this today is testimony to the fact that we did a good thing and maybe it wasn't perfect but you guys can fix it

LIBBY MITCHELL --- thank you etc

Jim Sappier In one of our discussion that we had at Penobscot we say that the congress has said the state of Maine and Penobscot, go on out and make your agreement and do whatever you want, you can follow this act or use it as a springboard –

there are certain acts passed by congress that the state might not be eligible for or the tribes might not be eligible for and we were thinking in Penobscot discussion, if the state and the tribes ever got together there are certain acts of congress we could really get part of and participate in by virtue of a terrific partnership if we could make this thing work --

I didn't want to tell you guys about this – this is a Penobscot discussion that we had – but if we could get this thing together, boy oh boy, could this thing work!

And it could be that acts of congress that we don't like we can make an agreement, well, we don't like it and we can agree to this – if we do like, we can consume them – do you see this in this because this is what we saw in our analysis> If a good partnership could work, this could really happen.

Tim Woodcock in short, yes, I think if the kind of limitations that you're describing, Jim, that were not anticipated that have come to be burdens to the tribe through federal legislations and federal rule making which doesn't always take into account the diversity

that really is the indian tribal experience in the united states, but the tribes and the state – I don't know why they couldn't go back and roll those back and give the tribes more latitude

Appendix 7

Opening Statement of Butch Phillips, Penobscot Nation, to the Tribal/State Work Group Oct. 3, 2007

Good afternoon. The message we want to convey today at this meeting to the state representatives is one of self-governance, self-determination and respect for the native Tribes of Maine. This message is not a new message, and it is not a Penobscot message nor a Passamaquoddy, Micmac or Maliseet message. It is a Wabanaki message.

We are once again united in an effort for survival as native Tribes, as native governments and as native people. All we are asking is respect for our culture and an opportunity to live that culture. Nothing is more important to the survival of an Indian tribe than the right to self-govern. It is an inherent right that pre-dates all other governments in North America.

Since 1820, when the State of Maine assumed all duties and obligations towards the Indians of Maine, the Tribes' sovereignty has remained dormant. Every aspect of native life has been controlled by the laws of the state. These laws were made without input from Tribal people and were often contrary to Wabanaki tradition. Similar to the experience of other native groups, these Maine laws were a method to change the lifestyle of the Tribes and control our destiny. We have not prospered under the control of others. We have survived, barely, but we have not prospered. If we are going to prosper we need to control our own fate. The Maine Tribes need to determine their own destiny as an exercise of their inherent right as free people.

We believed that we had secured that right by entering into the 1980 Maine Indian Claims Settlement Act. At the time of the negotiation of this settlement, the Tribes were adamant that we wanted to regain control over how we lived our lives; that we would never again allow anyone outside of the Tribe, especially the state, to determine our future or to interfere with our internal tribal affairs or way of life.

Unfortunately, it has not worked out as we intended. That is why we are here today. This group has been given the charge to examine changes to the Settlement Act that will allow the Tribes the opportunity to realize a new path of self-determination. The Settlement Act at the time of its creation was intended to be a model for governing relations between the Federal government, State governments and Tribal governments.

Over 27 years, it is unfortunate, that here in Maine this national tripartite governmental model has not worked, and it is a model that no other tribe in Indian Country would adopt. Tribes nation-wide do not have nor are they subjected to state control as are the Tribes of Maine.

The Settlement Act does not work for the Tribes because it tries to make us something we are not. We are first, last and always Indian Tribes, we are not creatures of the state. We have a unique history and culture that predates the State of Maine and the United States, and that uniqueness must be recognized and respected. The true history of the United States and the State of Maine can not be told without acknowledging the Tribes of Maine for all that we have

contributed, including defending this great Nation in the Revolutionary War and every war since that time.

The ability to govern ourselves within our own territory free from outside interference was agreed to in 1980. The constrained interpretation that the courts have placed on the phrase “internal tribal matters” and the municipal language of the Settlement Act has supplanted this agreement and as a result the Settlement Act has not provided the opportunity for true self-determination and self-governance for the Maine tribes.

The Wabanaki represent the oldest governments in the world, and possess the same attributes and responsibilities as other governments. In keeping with the ancient laws, traditions, customs and practices of the Wabanaki people, internal tribal matters must include at the very least the protection and enhancement of the health and welfare of tribal members; the protection, enhancement and restoration of tribal lands, waters and natural resources; allow the Tribes the ability to be economically self-sufficient; and preserve our culture, guaranteeing our inherent right of self-governance.

Over the past 27 years the Tribes have grown significantly. We now have the education, knowledge and experience to manage, develop and effectively operate all governmental systems. There is nothing more important to the Tribes than having a good and meaningful government to government relationship with the State of Maine.

Attitudes have changed since 1980 and support for a better working relationship between the State and the Tribes is growing and the time to end the strained relationship is long overdue. There is no legitimate reason why the Settlement Act should not be amended. It is time for both governments to work together effectively and harmoniously for the advantage of all citizens of the State of Maine.

Our goal is to improve the conditions of our people, our families and our governments and enjoy a strong and successful government-to-government relationship which will benefit all the people of Maine and fulfill the promise of greatness envisioned years ago by the parties to the Settlement Act. The time is now, after 27 years of trial and error, let's make it happen, collectively.

Reuben “Butch” Phillips
Elder, Penobscot Nation

Appendix 8

CURRENT LAW	PROPOSAL
Title 30 Municipalities and Counties	Title 30 Municipalities, Counties and Indian Tribes
PART 4	
INDIAN TERRITORIES	
CHAPTER 601	
MAINE INDIAN CLAIMS SETTLEMENT	
30 § 6201. Short title	
This Act shall be known and may be cited as "AN ACT to Implement the Maine Indian Claims Settlement."	
30 § 6202. Legislative findings and declaration of policy	<i>Please see Explanation contained in Houlton Band of Maliseet Indians Support for Proposed Revisions to the 1980 Maine Implementing Act November 19, 2007, pages 1-3, II.)</i>
The Legislature finds and declares the following.	
The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are asserting claims for possession of large areas of land in the State and for damages alleging that the lands in question originally were transferred in violation of the Indian Trade and Intercourse Act of 1790, 1 Stat. 137, or subsequent reenactments or versions thereof.	
Substantial economic and social hardship could be created for large numbers of landowners, citizens and	

CURRENT LAW	PROPOSAL
communities in the State, and therefore to the State as a whole, if these claims are not resolved promptly.	
The claims also have produced disagreement between the Indian claimants and the State over the extent of the state's jurisdiction in the claimed areas. This disagreement has resulted in litigation and, if the claims are not resolved, further litigation on jurisdictional issues would be likely.	
The Indian claimants and the State, acting through the Attorney General, have reached certain agreements which represent a good faith effort on the part of all parties to achieve a fair and just resolution of those claims which, in the absence of agreement, would be pursued through the courts for many years to the ultimate detriment of the State and all its citizens, including the Indians.	
The foregoing agreement between the Indian claimants and the State also represents a good faith effort by the Indian claimants and the State to achieve a just and fair resolution of their disagreement over jurisdiction on the present Passamaquoddy and Penobscot Indian reservations and in the claimed areas. To that end, the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act. The Houlton Band of Maliseet Indians and its lands will be wholly subject to the laws of the State.	The foregoing agreement between the Indian Tribes and the State also represents a good faith effort by the Indian Tribes and the State to achieve a just and fair resolution of their disagreement over jurisdiction on the present Passamaquoddy and Penobscot Indian reservations and in the claimed areas. To that end, the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act.
It is the purpose of this Act to implement in part the foregoing agreement.	It is the purpose of this Act to implement in part the foregoing agreement and to address the State's relationship with the Houlton Band of Maliseet Indians.

CURRENT LAW	PROPOSAL
30 § 6203. Definitions	
As used in this Act, unless the context indicates otherwise, the following terms have the following meanings.	
1. Commission. "Commission" means the Maine Indian Tribal-State Commission created by section 6212.	
2. Houlton Band of Maliseet Indians. "Houlton Band of Maliseet Indians" means the Maliseet Tribe of Indians as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians.	
2-A. Houlton Band Trust Land. "Houlton Band Trust Land" means land or natural resources acquired by the secretary in trust for the Houlton Band of Maliseet Indians, in compliance with the terms of this Act and the Maine Indian Claims Settlement Act of 1980, United States Public Law 96-420, with moneys from the original \$900,000 congressional appropriation and interest thereon deposited in the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724, or with proceeds from a taking of Houlton Band Trust Land for public uses pursuant to the laws of this State or the United States.	
3. Land or other natural resources.	

CURRENT LAW	PROPOSAL
"Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including, but without limitation, minerals and mineral rights, timber and timber rights, water and water rights and hunting and fishing rights.	
4. Laws of the State. "Laws of the State" means the Constitution and all statutes, rules or regulations and the common law of the State and its political subdivisions, and subsequent amendments thereto or judicial interpretations thereof.	
5. Passamaquoddy Indian Reservation. "Passamaquoddy Indian Reservation" means those lands reserved to the Passamaquoddy Tribe by agreement with the State of Massachusetts dated September 19, 1794, excepting any parcel within such lands transferred to a person or entity other than a member of the Passamaquoddy Tribe subsequent to such agreement and prior to the effective date of this Act. If any lands reserved to the Passamaquoddy Tribe by the aforesaid agreement hereafter are acquired by the Passamaquoddy Tribe, or the secretary on its behalf, that land shall be included within the Passamaquoddy Indian Reservation. For purposes of this subsection, the lands reserved to the Passamaquoddy Tribe by the aforesaid agreement shall be limited to Indian Township in Washington County; Pine Island, sometimes referred to as Taylor's Island, located in Big Lake, in Washington County; 100 acres of land located on Nemcass Point, sometimes referred to as Governor's Point, located in Washington County and shown on a survey of John Gardner which is filed in	

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<p>the Maine State Archives, Executive Council Records, Report Number 264 and dated June 5, 1855; 100 acres of land located at Pleasant Point in Washington County as described in a deed to Captain John Frost from Theodore Lincoln, Attorney for Benjamin Lincoln, Thomas Russell, and John Lowell dated July 14, 1792, and recorded in the Washington County Registry of Deeds on April 27, 1801, at Book 3, Page 73; and those 15 islands in the St. Croix River in existence on September 19, 1794 and located between the head of the tide of that river and the falls below the forks of that river, both of which points are shown on a 1794 plan of Samuel Titcomb which is filed in the Maine State Archives in Maine Land Office Plan Book Number 1, page 33.</p> <p>The "Passamaquoddy Indian Reservation" includes those lands which have been or may be acquired by the Passamaquoddy Tribe within that portion of the Town of Perry which lies south of Route 1 on the east side of Route 190 and south of lands now owned or formerly owned by William Follis on the west side of Route 190, provided that no such lands may be included in the Passamaquoddy Indian Reservation until the Secretary of State receives certification from the treasurer of the Town of Perry that the Passamaquoddy Tribe has paid to the Town of Perry the amount of \$350,000, provided that the consent of the Town of Perry would be voided unless the payment of the \$350,000 is made within 120 days of the effective date of this section. Any commercial development of those lands must be by approval of the voters of the Town of Perry with the exception of land development currently in the building stages.</p>	

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6. Passamaquoddy Indian territory. "Passamaquoddy Indian territory" means that territory defined by section 6205, subsection 1.	
7. Passamaquoddy Tribe. "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations.	
8. Penobscot Indian Reservation. "Penobscot Indian Reservation" means the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting solely of Indian Island, also known as Old Town Island, and all islands in that river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act. If any land within Nicatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land shall be included within the Penobscot Indian Reservation.	
The "Penobscot Indian Reservation" includes the following parcels of land which have been or may be acquired by the Penobscot Nation from Bangor Pacific Hydro Associates as compensation for flowage of reservation lands by the West Enfield dam: A parcel located on the Mattagamon Gate Road and on the East	

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Branch of the Penobscot River in T.6 R.8 WELS, which is a portion of the "Mattagamon Lake Dam Lot" and has an area of approximately 24.3 acres, and Smith Island in the Penobscot River, which has an area of approximately one acre.	
9. Penobscot Indian territory. "Penobscot Indian territory" means that territory defined by section 6205, subsection 2.	
10. Penobscot Nation. "Penobscot Nation" means the Penobscot Indian Nation as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Penobscot Reservation Tribal Council.	
11. Secretary. "Secretary" means the Secretary of the Interior of the United States.	
12. Settlement Fund. "Settlement Fund" means the trust fund established for the Passamaquoddy Tribe and Penobscot Nation by the United States pursuant to congressional legislation extinguishing aboriginal land claims in Maine.	
13. Transfer. "Transfer" includes, but is not necessarily limited to, any voluntary or involuntary sale, grant, lease, allotment, partition or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or other conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or other natural resources.	

CURRENT LAW	PROPOSAL
30 § 6204. Laws of the State to apply to Indian Lands	
Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.	State laws apply to the Tribes, except that any State law that affects or preempts the Tribe's right to self government as set forth in section 6206 shall not apply to the Tribes. Any State law that is determined to be applicable to the Tribes, its lands, or members shall be considered a minimum requirement and the Tribes, at their discretion, may apply a stricter or broader requirement within their territory.
30 § 6205. Indian territory	
1. Passamaquoddy Indian territory. Subject to subsections 3, 4 and 5, the following lands within the State are known as the "Passamaquoddy Indian territory:"	
A. The Passamaquoddy Indian Reservation;	
B. The first 150,000 acres of land acquired by the secretary for the benefit of the Passamaquoddy Tribe from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 31, 1991, are not held in common with any other person or entity and are certified by the secretary by January 31, 1991, as held for the benefit of the Passamaquoddy Tribe:	
The lands of Great Northern Nekoosa Corporation located in	

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<p>T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; and the lands of the Dyer Interests in T.A.R.7 W.E.L.S., T.3 R.9 N.W.P., T.3 R.3. N.B.K.P. (Alder Brook Township), T.3 R.4 N.B.K.P. (Hammond Township), T.2 R.4 N.B.K.P. (Pittston Academy Grant), T.2 R.3 N.B.K.P. (Soldiertown Township), and T.4 R.4 N.B.K.P. (Prentiss Township),</p>	

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and any lands in Albany Township acquired by the Passamaquoddy Tribe before January 1, 1991;	
C. Any land not exceeding 100 acres in the City of Calais acquired by the secretary for the benefit of the Passamaquoddy Tribe as long as the land is acquired by the secretary prior to January 1, 2001, is not held in common with any other person or entity and is certified by the secretary by January 31, 2001, as held for the benefit of the Passamaquoddy Tribe, if:	
(1) The acquisition of the land by the tribe is approved by the legislative body of that city; and	
(2) A tribal-state compact under the federal Indian Gaming Regulatory Act is agreed to by the State and the Passamaquoddy Tribe or the State is ordered by a court to negotiate such a compact;	
D. All land acquired by the secretary for the benefit of the Passamaquoddy Tribe in T. 19, M.D. to the extent that the land is acquired by the secretary prior to January 31, 2020, is not held in common with any other person or entity and is certified by the secretary by January 31, 2020 as held for the benefit of the Passamaquoddy Tribe; and	
D-1. Land acquired by the	

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<p>secretary for the benefit of the Passamaquoddy Tribe in Centerville consisting of Parcels A, B and C conveyed by Bertram C. Tackeff to the Passamaquoddy Tribe by quitclaim deed dated July 27, 1981, recorded in the Washington County Registry of Deeds in Book 1147, Page 251, to the extent that the land is acquired by the secretary prior to January 31, 2017, is not held in common with any other person or entity and is certified by the secretary by January 31, 2017 as held for the benefit of the Passamaquoddy Tribe.</p>	
<p>E. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Township 21 consisting of Gordon Island in Big Lake, conveyed by Domtar Maine Corporation to the Passamaquoddy Tribe by corporate quitclaim deed dated April 30, 2002, recorded in the Washington County Registry of Deeds in Book 2624, Page 301, to the extent that the land is acquired by the secretary prior to January 31, 2017, is not held in common with any other person or entity and is certified by the secretary by January 31, 2017 as held for the benefit of the Passamaquoddy Tribe.</p>	
<p>2. Penobscot Indian territory. Subject to subsections 3, 4 and 5, the following lands within the State shall be known as the "Penobscot Indian territory:"</p>	

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A. The Penobscot Indian Reservation; and	
B. The first 150,000 acres of land acquired by the secretary for the benefit of the Penobscot Nation from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 31, 2021, are not held in common with any other person or entity and are certified by the secretary by January 31, 2021, as held for the Penobscot Nation:	
The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion	

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<p>of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; any land acquired in Williamsburg T.6, R.8, N.W.P.; any 300 acres in Old Town mutually agreed upon by the City of Old Town and the Penobscot Nation Tribal Government, provided that the mutual agreement must be finalized prior to August 31, 1991; any lands in Lakeville acquired by the Penobscot Nation before January 1, 1991; and all the property acquired by the Penobscot Indian Nation from Herbert C. Haynes, Jr., Herbert C. Haynes, Inc. and Five Islands Land Corporation located in Township 1, Range 6 W.E.L.S.</p>	
3. Takings under the laws of the State.	
<p>A. Prior to any taking of land for public uses within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity proposing the taking, or, in the event of a taking proposed by a public utility, the Public Utilities Commission, shall be required to find that there is no reasonably feasible alternative to the proposed taking. In making this finding, the public entity or the Public Utilities Commission shall compare the cost, technical feasibility, and</p>	

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<p>environmental and social impact of the available alternatives, if any, with the cost, technical feasibility and environmental and social impact of the proposed taking. Prior to making this finding, the public entity or Public Utilities Commission, after notice to the affected tribe or nation, shall conduct a public hearing in the manner provided by the Maine Administrative Procedure Act, on the affected Indian reservation. The finding of the public entity or Public Utilities Commission may be appealed to the Maine Superior Court.</p>	
<p>In the event of a taking of land for public uses within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity or public utility making the taking shall, at the election of the affected tribe or nation, and with respect to individually allotted lands, at the election of the affected allottee or allottees, acquire by purchase or otherwise for the respective tribe, nation, allottee or allottees a parcel or parcels of land equal in value to that taken; contiguous to the affected Indian reservation; and as nearly adjacent to the parcel taken as practicable. The land so acquired shall, upon written certification to the Secretary of State by the public entity or public utility acquiring such land describing the location and boundaries thereof, be included within the Indian Reservation of the affected tribe or nation without further approval of the State. For purposes of this section, land along and adjacent to the Penobscot River shall be deemed to be contiguous to the Penobscot Indian Reservation. The acquisition of land for the Passamaquoddy</p>	

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Tribe or the Penobscot Nation or any allottee under this subsection shall be full compensation for any such taking. If the affected tribe, nation, allottee or allottees elect not to have a substitute parcel acquired in accordance with this subsection, the moneys received for such taking shall be reinvested in accordance with the provisions of paragraph B.	
REVISION NOTE: This blocked paragraph needs to go after paragraph B as part of the subsection.	
B. If land within either the Passamaquoddy Indian Territory or the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation is taken for public uses in accordance with the laws of the State the money received for said land shall be reinvested in other lands within 2 years of the date on which the money is received. To the extent that any moneys received are so reinvested in land with an area not greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the lands so acquired by such reinvestment shall be included within the respective Indian territory without further approval of the State. To the extent that any moneys received are so reinvested in land with an area greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the respective tribe or nation shall	

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<p>designate, within 30 days of such reinvestment, that portion of the land acquired by such reinvestment, not to exceed the area taken, which shall be included within the respective Indian territory. No land acquired pursuant to this paragraph shall be included within either Indian Territory until the Secretary of Interior has certified, in writing, to the Secretary of State the location and boundaries of the land acquired.</p>	
<p>4. Taking under the laws of the United States. In the event of a taking of land within the Passamaquoddy Indian territory or the Penobscot Indian territory for public uses in accordance with the laws of the United States and the reinvestment of the moneys received from such taking within 2 years of the date on which the moneys are received, the status of the lands acquired by such reinvestment shall be determined in accordance with subsection 3, paragraph B.</p>	
<p>5. Limitations. No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the</p>	

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Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.	
Any lands within the Passamaquoddy Indian territory or the Penobscot Indian territory, the fee to which is transferred to any person who is not a member of the respective tribe or nation, shall cease to constitute a portion of Indian territory and shall revert to its status prior to the inclusion thereof within Indian territory.	
30 § 6205-A. Acquisition of Houlton Band Trust Land	<i>Please see Explanation contained in Houlton Band of Maliseet Indians Support for Proposed Revisions to the 1980 Maine Implementing Act November 19, 2007, pages 5-7, IV.</i>
1. Approval. The State of Maine approves the acquisition, by the secretary, of Houlton Band Trust Land within the State of Maine provided as follows.	Delete. This Section was superseded by the Houlton Band of Maliseet Supplementary Claims Settlement Act of 1986" Pub L. 99-566, Oct 27, 1986, 100 stat. 3184]
A. No land or natural resources acquired by the secretary may have the status of Houlton Band Trust Land, or be deemed to be land or natural resources held in trust by the United States, until the secretary files with the Maine Secretary of State a certified copy of the deed, contract or other instrument of conveyance, setting forth the location and boundaries of the land or natural resources so acquired. Filing by mail shall be complete upon mailing.	Delete
B. No land or natural resources	Delete

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may be acquired by the secretary for the Houlton Band of Maliseet Indians until the secretary files with the Maine Secretary of State a certified copy of the instrument creating the trust described in section 6208-A, together with a letter stating that he holds not less than \$100,000 in a trust account for the payment of Houlton Band of Maliseet Indians' obligations, and a copy of the claim filing procedures he has adopted.	
C. No land or natural resources located within any city, town, village or plantation may be acquired by the secretary for the Houlton Band of Maliseet Indians without the approval of the legislative body of the city, town, village or plantation.	Delete
2. Takings for public uses. Houlton Band Trust Land may be taken for public uses in accordance with the laws of the State of Maine to the same extent as privately-owned land. The proceeds from any such taking shall be deposited in the Land Acquisition Fund. The United States shall be a necessary party to any such condemnation proceeding. After exhausting all state administrative remedies, the United States shall have an absolute right to remove any action commenced in the courts of this State to a United States' court of competent jurisdiction.	Delete
3. Restraints on alienation. Any transfer of Houlton Band Trust Land shall be void ab initio and without any validity in law or equity, except:	Delete

CURRENT LAW	PROPOSAL
A. Takings for public uses pursuant to the laws of this State;	Delete
B. Takings for public uses pursuant to the laws of the United States;	Delete
C. Transfers of individual use assignments from one member of the Houlton Band of Maliseet Indians to another band member;	Delete
D. Transfers authorized by United States Public Law 96-420, Section 5(g)(3), United States Code, Title 25, Section 1724(g)(3); and	Delete
E. Transfers made pursuant to a special act of Congress.	Delete
If the fee to the Houlton Band Trust Fund Land is lawfully transferred to any person or entity, the land so transferred shall cease to have the status of Houlton Band Trust Land.	Delete
30 § 6206. Powers and duties of the Indian tribes within their respective Indian territories	
1. General Powers. Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective	Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, as federally recognized sovereign Indian tribes, each has inherent authority and immunities under federal law. Within their respective Indian territories, however, the Tribes may, in accordance with ancient tribal laws, customs and traditions, exercise their inherent right of self government to:

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tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State. The Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory or the Penobscot Indian territory who is not a member of the respective tribe or nation nonetheless shall be equally entitled to receive any municipal or governmental services provided by the respective tribe or nation or by the State, except those services which are provided exclusively to members of the respective tribe or nation pursuant to state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.	
	1. Protect and enhance the health, safety, education and welfare of tribal members.
	2. Protect, enhance and/or restore tribal lands, waters and natural resources.
	3. Promote or establish means for tribal economic self-sufficiency.
	4. Preserve and enhance the vitality of the cultural, spiritual and historic elements of the tribe.
	The Passamaquoddy Tribe and the Penobscot Nation shall have, exercise, and

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	enjoy all the rights, privileges, benefits, powers and immunities of any federally-recognized sovereign tribe within their respective Indian territory relating to their respective tribal members, lands and natural resources. The inherent right to tribal self-government shall be paramount with regard to any other duty, obligation, liability, or limitation.
	A. The governing body of each respective Tribe has the exclusive jurisdiction within their territory to enact ordinances or laws to govern the Tribe and protect its common welfare for matters relating to the Tribes' internal and local affairs, as well as the ways and means of financing its self-governing functions, Tribal governmental policies, laws, ordinances and other internal tribal matters shall not be subject to regulation by the state. Internal tribal matters may include, but not limited to, the following;
	(1) Each Tribe has the right to determine the membership of the Tribe.
	(2) Each Tribe has the right to determine the form of its government, the right to determine who is eligible to vote, who is eligible to run for office and the manner of the elections.
	(3) Each Tribe has the right to control its domestic relations.

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	(4) Each Tribe has the right to control, maintain and protect its culture, traditions and ancient tribal laws and practices.
	(5) Each Tribe has the right to control, maintain, protect and regulate its own territory.
	(6) Each Tribe has the right to maintain law and order and administer justice on the tribal territory.
	a. Law enforcement officers appointed by the Tribes shall have exclusive authority to enforce Tribal ordinances within their territory and to enforce the criminal, juvenile, civil and domestic relations laws over which each Tribe has jurisdiction.
	(7) Each Tribe has the right to control, maintain and regulate economic development and commerce within its tribal territory including all benefits and jurisdictional authority available to other federally recognized tribes.
	(8) Each Tribe has the right to control and regulate Tribal government employment.
	(9) Each Tribe has the right to control and regulate taxation within

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	its tribal territory.
	(10) Each Tribe may enter into a compact or agreements with the State with respect to business ventures including but not limited to gaming within their tribal territories.
	(11) Each Tribe has the inherent right to freely worship the Creator and to enjoy their spiritual practices unmolested.
	(12) The Maine Freedom of Access Law shall not apply.
	B. The Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory or the Penobscot Indian territory who is not a member of the respective tribe or nation nonetheless shall be equally entitled to receive any governmental services provided by the respective tribe or nation or by the State, except those services which are provided exclusively to members of the respective tribe or nation pursuant to tribal, state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.
2. Power to sue and be sued. The Passamaquoddy Tribe, the Penobscot Nation and their members may sue and be sued in the courts of the State to the same	Delete

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extent as any other entity or person in the State provided, however, that the respective tribe or nation and its officers and employees shall be immune from suit when the respective tribe or nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.	
3. Ordinances. The Passamaquoddy Tribe and the Penobscot Nation each shall have the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section shall be made by each tribal governing body. Should either tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State shall have exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. The State shall have exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.	Delete
30 § 6206-A. Powers of the Houlton Band of Maliseet Indians	
	<i>Please see Explanation contained in HOULTON BAND OF MALISEET INDIANS SUPPORT FOR PROPOSED REVISIONS TO THE 1980 MAINE IMPLEMENTING ACT NOVEMBER 19, 2007, pages 4-5, III.)</i>
The Houlton Band of Maliseet Indians shall not exercise nor enjoy the powers, privileges and immunities of a	1. Powers, privileges and immunities. The Houlton Band of Maliseet Indians shall exercise the following powers, privileges

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municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.	and immunities.
	A. The governing body of the Band has the right to enact legislation to govern the Band and protect its common welfare for matters relating to the Band's internal and local affairs, as well as the ways and means of financing its self-governing functions, including but not limited to, the following.
	(1) The Band has the right to determine the membership of the Tribe.
	(2) The Band has the right to determine the form of its government, the right to determine who is eligible to vote, who is eligible to run for office and the manner of the elections.
	(3) The Band has the right to control its domestic relations.
	(4) The Band has the right to control, maintain and protect its culture and traditions.
	(5) The Band has the right to control, maintain, protect and regulate the Houlton Band trust lands.
	(6) The Band has the right maintain

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	law on order and administer justice on the Houlton Band Trust lands.
	A. The jurisdiction of the Band's court shall be the same as that of the Penobscot and the Passamaquoddy court's found at 30 M.R.S.A 6209. (A) and (B) (1),(2),(3) and (4) .
	B. The jurisdiction of the Band's court shall be the same as that of the Penobscot and the Passamaquoddy court's found at 30 M.R.S.A 6209. (A) and (B) (1),(2),(3) and (4) .
	(7) The Band has the right to control, maintain and regulate economic development and commerce on Houlton Band Trust lands, except that gaming activities shall continue to be governed by State law.
	(8) The Band has the right to control Tribal government employment.
	(9) The Band has the right to control and regulate taxation on Houlton Band trust lands.
	B. The Band, its officers and employees shall be immune from suit when the Band is acting in its governmental capacity to the same extent as any municipality or like

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	officers or employees thereof within the State.
	2. Application of State laws. State laws and rules apply to the Band, except that a State law or rule that affects or preempts the Band's right to self government as set forth in subsection 1 above shall apply to the Band.
	A. Any State law or rule that is determined to be applicable to the Houlton Band, its lands, or members shall be considered a minimum requirement and the Band may apply a stricter or broader requirement, at its discretion.
	B. State agencies and the Band may enter into agreements to address the application of State laws and rules to the Band and to address conflicts before or as they arise.
	3. State Consultation with the Band. State agencies shall provide for a timely and meaningful consultation with the Band before proposing, adopting or implementing legislation or administrative measures that may materially affect the Band.
	4. Interpretation. The rights of the Band set forth in subsection 1 must be construed in a manner that protects that Band's right to self determination and in accordance with federal law.
30 § 6206-B. Law enforcement powers of Houlton Band of Maliseet Indians	

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1. Appointment of tribal law enforcement officers. The Houlton Band of Maliseet Indians may appoint law enforcement officers who have the authority to enforce all the laws of the State within the Houlton Band Trust Land. This section does not limit the existing authority of tribal officers under tribal law or affect the performance of federal duties by tribal officers.	
2. Authority of state, county and local law enforcement officers. State and county law enforcement officers and law enforcement officers appointed by the Town of Houlton have the authority to enforce all laws of the State within the Houlton Band Trust Land.	
3. Agreements for cooperation and mutual aid. The Houlton Band of Maliseet Indians and any state, county or local law enforcement agency may enter into agreements for cooperation and mutual aid.	
4. Powers, duties and training requirements. Law enforcement officers appointed by the Houlton Band of Maliseet Indians pursuant to this section possess the same powers, enjoy the same immunities and are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.	
5. Report to Legislature. By January 1, 2010, the Houlton Band of Maliseet Indians shall file a report with the joint standing committee of the Legislature having jurisdiction over judiciary matters detailing the band's	

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experience with the exercise of law enforcement authority under this section. The report must include observations and comments from the state and county law enforcement agencies providing law enforcement services in Aroostook County and from the Houlton Police Department.	
6. Repeal. This section is repealed July 1, 2010.	
30 § 6207. Regulation of fish and wildlife resources	
1. Adoption of ordinances by tribe. Subject to the limitations of subsection 6, the Passamaquoddy Tribe and the Penobscot Nation each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:	
A. Hunting, trapping or other taking of wildlife; and	
B. Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area.	
Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe or the Penobscot Nation. In addition to the authority provided by this subsection, the	

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Passamaquoddy Tribe and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.	
2. Registration stations. The Passamaquoddy Tribe and the Penobscot Nation shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe and the Penobscot Nation shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe and the Penobscot Nation shall be available, at all times, for inspection and examination by the commissioner.	
3. Adoption of regulations by the commission. Subject to the limitations of subsection 6, the commission shall have exclusive authority to promulgate fishing rules or regulations on:	
A. Any pond other than those specified in subsection 1, paragraph B, 50% or more of the	

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linear shoreline of which is within Indian territory;	
B. Any section of a river or stream both sides of which are within Indian territory; and	
C. Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more.	
In promulgating such rules or regulations the commission shall consider and balance the need to preserve and protect existing and future sport and commercial fisheries, the historical non-Indian fishing interests, the needs or desires of the tribes to establish fishery practices for the sustenance of the tribes or to contribute to the economic independence of the tribes, the traditional fishing techniques employed by and ceremonial practices of Indians in Maine and the ecological interrelationship between the fishery regulated by the commission and other fisheries throughout the State. Such regulation may include without limitation provisions on the method, manner, bag and size limits and season for fishing.	
Said rules or regulations shall be equally applicable on a nondiscriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe or Penobscot Nation. Rules and regulations promulgated by the commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe and the Penobscot Nation. In adopting rules or regulations pursuant to this subsection, the commission shall comply with the Maine	

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Administrative Procedure Act.	
In order to provide an orderly transition of regulatory authority, all fishing laws and rules and regulations of the State shall remain applicable to all waters specified in this subsection until such time as the commission certifies to the commissioner that it has met and voted to adopt its own rules and regulations in substitution for such laws and rules and regulations of the State.	
3-A. Horsepower and use of motors. Subject to the limitations of subsection 6, the commission has exclusive authority to adopt rules to regulate the horsepower and use of motors on waters less than 200 acres in surface area and entirely within Indian territory.	
(REVISOR'S NOTE: Subsection 3-A not in effect as to Passamaquoddy Tribe or Penobscot Nation because requirements of PL 1997, c. 739, @@13, 14 were not met)	
4. Sustenance fishing within the Indian reservations. Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.	
5. Posting. Lands or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or	

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other use of such lands or waters.	
6. Supervision by Commissioner of Inland Fisheries and Wildlife. The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe or nation and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affecting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the boundaries of land or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation, he shall inform the governing body of the tribe or nation or the commission, as is appropriate, of his opinion and attempt to develop appropriate remedial standards in consultation with the tribe or nation or the commission. If such efforts fail, he may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a	

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significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measure be more restrictive than those which the commissioner could impose if the area in question was not within Indian territory or waters subject to commission regulation.	
In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commissioner may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence.	
7. Transportation of game. Fish lawfully taken within Indian territory or in waters subject to commission regulation and wildlife lawfully taken within Indian territory and registered pursuant to ordinances adopted by the Passamaquoddy Tribe and the Penobscot Nation, may be transported within the State.	
8. Fish and wildlife on non-Indian	

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lands. The commission shall undertake appropriate studies, consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.	
9. Fish. As used in this section, the term "fish" means a cold blooded completely aquatic vertebrate animal having permanent fins, gills and an elongated streamlined body usually covered with scales and includes inland fish and anadromous and catadromous fish when in inland water.	
	<i>Please see Explanation contained in Houlton Band of Maliseet Indians Support for Proposed Revisions to the 1980 Maine Implementing Act November 19, 2007, pages 8, V.)</i>
	10. Sustenance Moose Hunting Houlton Band (New). Notwithstanding any other law of the State, until such time as the Houlton Band of Maliseet Indians acquire trust lands sufficient to support the hunting of moose, the State of Maine shall allow the taking of one moose per Maliseet household, from any location where the hunting of such game is allowed. If the Commissioner of Inland Fisheries and Wildlife, at any time, has reasonable grounds to believe that the right provided in this provision is adversely affecting or is likely to adversely affect the stock of moose within the State, the Commissioner may adopt remedial measures in consultation with the Houlton Band using the same

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	process found in 6207 (6).
	11. Transportation of game. The moose lawfully taken in accordance with subsection 6207(10) may be transported within the State.
	30 § 6207-A Regulation of the surface use of great ponds
	The Passamaquoddy Tribe and the Penobscot Nation each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating the surface use of great ponds located wholly within their respective territories. Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation.
30 § 6208. Taxation	
1. Settlement Fund income. The Settlement Fund and any portion of such funds or income therefrom distributed to the Passamaquoddy Tribe or the Penobscot Nation or the members thereof shall be exempt from taxation under the laws of the State.	
2. Property taxes. The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property	2. Property taxes. The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property

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<p>provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. The Houlton Band of Maliseet Indians shall make payments in lieu of taxes on Houlton Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State.</p>	<p>provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State.</p> <p><i>(Note: The following sentence was deleted from the original text “The Houlton Band of Maliseet Indians shall make payments in lieu of taxes on Houlton Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource.”)</i></p>
<p>3. Other taxes. The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section</p>	<p>3. Other taxes. The Maine Tribes tax equity in the return of tax revenue referred to as the Tribal dedicated account fund administered by the Treasurer of the State for the purpose of returning sales tax revenue to the respective Tribe or Band: The Assessor on a monthly basis shall notify the State Controller and Treasurer the</p>

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either tribe or nation, when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such.	amount of revenue collected within each respective Tribe(s) or Band(s) territory on sales occurring at each respective Tribe or Band location, Indian Territory or Tribal lands for revenue collected for deposit in each respective Tribe's Account Fund for their governmental use. (36MRSA1815)
	On Tribal Land members of the Maine Tribes shall be exempt from the application of State income taxes from income derived from revenue paid for work or services provided within the Indian territory or Tribal Lands irrespective of place of residence.
	On Tribal lands members of the Maine Tribes shall be exempt from the application of all other taxes and fees of the State, a county, a district, or any non-tribal taxing authority for activities and transactions within the Indian territory.
30 § 6208-A. Houlton Band Tax Fund	<i>Please see Explanation contained in Houlton Band of Maliseet Indians Support for Proposed Revisions to the 1980 Maine Implementing Act November 19, 2007, pages 5-7, IV.)</i>
1. Fund. The satisfaction of obligations, described in section 6208, owed to a governmental entity by the Houlton Band of Maliseet Indians shall be assured by a trust fund to be known as the Houlton Band Tax Fund. The secretary shall administer the fund in accordance with reasonable and prudent trust management standards. The initial principal of the fund shall be not less than \$100,000. The principal shall be formed	Payment of Taxes By the Houlton Band of Maliseet Indians. Notwithstanding any other provision of law, all taxation of the Houlton Band of Maliseet Indians shall be controlled by federal law and the federal statute known as the "Houlton Band of Maliseet Supplementary Claims Settlement Act of 1986" Pub L. 99-566, Oct 27, 1986, 100 stat. 3184.

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<p>with moneys transferred from the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724. Any interest earned by the Houlton Band Tax Fund shall be added to the principal as it accrues and that interest shall be exempt from taxation. The secretary shall maintain a permanent reserve of \$25,000 at all times and that reserve shall not be made available for the payment of claims. The interest earned by the reserved funds shall also be added to the principal available for the payment of obligations.</p>	
<p>2. Claims. The secretary shall pay from the fund all valid claims for taxes, payments in lieu of property taxes and fees, together with any interest and penalties thereon, for which the Houlton Band of Maliseet Indians is liable pursuant to section 6208, provided that such obligation is final and not subject to further direct administrative or judicial review under the laws of the State of Maine. No payment of a valid claim may be satisfied with moneys from the fund unless the secretary finds, as a result of his own inquiry, that no other source of funds controlled by the secretary is available to satisfy the obligation. The secretary shall adopt written procedures, consistent with this section, governing the filing and payment of claims after consultation with the Maine Commissioner of Finance and Administration and the Houlton Band of Maliseet Indians.</p>	
<p>3. Distributions. If the unencumbered principal available for the payment of claims exceeds the sum of \$100,000, the secretary shall, except for</p>	delete

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good cause shown, provide for the transfer of such excess principal to the Houlton Band of Maliseet Indians. The secretary shall give 30 days' written notice to the Commissioner of Finance and Administration of a proposed transfer of excess principal to the Houlton Band of Maliseet Indians. Any distribution of excess principal to the Houlton Band of Maliseet Indians shall be exempt from taxation.	
4. Other remedies. The existence of the Houlton Band Tax Fund as a source for the payment of Houlton Band of Maliseet Indians' obligations shall not abrogate any other remedy available to a governmental entity for the collection of taxes, payments in lieu of taxes and fees, together with any interest or penalty thereon.	delete
30 § 6209. Jurisdiction over criminal offenses, juvenile crimes, civil disputes and domestic relations (REPEALED)	
30 § 6209-A. Jurisdiction of the Passamaquoddy Tribal Court	
1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Passamaquoddy Tribe has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:	
A. Criminal offenses for which the maximum potential term of imprisonment is less than one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Passamaquoddy	

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<p>Tribe by a member of either the Passamaquoddy Tribe or the Penobscot Nation, except when committed against a person who is not a member of either the Passamaquoddy Tribe or the Penobscot Nation or against the property of a person who is not a member of either the Passamaquoddy Tribe or the Penobscot Nation;</p>	
<p>B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Passamaquoddy Tribe under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B to D, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the reservation of the Passamaquoddy Tribe;</p>	
<p>C. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Passamaquoddy Tribe and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Passamaquoddy Tribe by a member of either the Passamaquoddy Tribe or the Penobscot Nation;</p>	

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D. Indian child custody proceedings to the extent authorized by applicable federal law; and	
E. Other domestic relations matters, including marriage, divorce and support, between members of either the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside within the Indian reservation of the Passamaquoddy Tribe.	
The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Passamaquoddy Tribe chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Passamaquoddy Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.	
2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the	

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Passamaquoddy Tribe has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.	
3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Passamaquoddy Tribe constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.	
4. Double jeopardy, collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Passamaquoddy Tribe has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Passamaquoddy Tribe has exclusive jurisdiction under this section. The	

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determination of an issue of fact in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum.	
5. Future Indian communities. Any 25 or more adult members of the Passamaquoddy Tribe residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning Passamaquoddy tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Passamaquoddy Tribe, it amend this Act to extend the jurisdiction of the Passamaquoddy Tribe to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning Passamaquoddy tribal members.	
30 § 6209-B. Jurisdiction of the Penobscot Nation Tribal Court	
1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the	

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State, over:	
A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Penobscot Nation by a member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of any federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group;	
B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B to D, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the Indian reservation of the Penobscot Nation;	
C. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the	

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Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot Nation;	
D. Indian child custody proceedings to the extent authorized by applicable federal law; and	
E. Other domestic relations matters, including marriage, divorce and support, between members of either the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside on the Indian reservation of the Penobscot Nation.	
The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Penobscot Nation chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Penobscot Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.	
2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Penobscot Nation is deemed to be enforcing Penobscot tribal	

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<p>law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.</p>	
<p>3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Penobscot Nation constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.</p>	
<p>4. Double jeopardy, collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Penobscot Nation has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal</p>	

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offense or juvenile crime, arising out of the same conduct, over which the Penobscot Nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.	
5. Future Indian communities. Any 25 or more adult members of the Penobscot Nation residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Penobscot Nation, it amend this Act to extend the jurisdiction of the Penobscot Nation to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning tribal members.	
30 § 6210. Law enforcement on Indian reservations and within Indian territory	
1. Exclusive authority of tribal law enforcement officers. Law	

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enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation have exclusive authority to enforce, within their respective Indian territories, ordinances adopted under section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian reservations, the criminal, juvenile, civil and domestic relations laws over which the Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.	
2. Joint authority of tribal and state law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation have the authority within their respective Indian territories and state and county law enforcement officers have the authority within both Indian territories to enforce rules or regulations adopted by the commission under section 6207, subsection 3 and to enforce all laws of the State other than those over which the Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.	
3. Agreements for cooperation and mutual aid. This section does not prevent the Passamaquoddy Tribe or the Penobscot Nation and any state, county or local law enforcement agency from entering into agreements for cooperation and mutual aid.	
4. Powers and training requirements. Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation possess the same powers and are subject to the same	

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duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.	
30 § 6211. Eligibility of Indian tribes and state funding	
1. Eligibility generally. The Passamaquoddy Tribe and Penobscot Nation shall be eligible for participation and entitled to receive benefits from the State under any state program which provides financial assistance to all municipalities as a matter of right. Such entitlement shall be determined using statutory criteria and formulas generally applicable to municipalities in the State. To the extent that any such program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through any source of revenue available to the respective tribe or nation, including but without limitation taxation to the extent authorized within its respective Indian territory. In the event that any applicable formula regarding distribution of moneys employs a factor for the municipal real property tax rate, and in the absence of such tax within either Indian territory, the formula applicable to such Indian territory shall be computed using the most current average equalized real property tax rate of all municipalities in the State as determined by the State Tax Assessor. In the event any such formula regarding distribution of moneys employs a factor representing municipal valuation, the valuation applicable to such Indian territory shall be determined by the State Tax Assessor in the manner generally provided by the laws of the State,	

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provided, however, that property owned by or held in trust for either tribe or nation and used for governmental purposes shall be treated for purposes of valuation as like property owned by a municipality.	
2. Limitation on eligibility. In computing the extent to which either the Passamaquoddy Tribe or the Penobscot Nation is entitled to receive state funds under subsection 1, other than funds in support of education, any money received by the respective tribe or nation from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding, must be deducted in computing any payment to be made to the respective tribe or nation by the State. Unless otherwise provided by federal law, in computing the extent to which either the Passamaquoddy Tribe or the Penobscot Nation is entitled to receive state funds for education under subsection 1, the state payment must be reduced by 15% of the amount of federal funds for school operations received by the respective tribe or nation within substantially the same period for which state funds are provided, and in excess of any local share ordinarily required by state law as a condition of state funding. A reduction in state funding for secondary education may not be made under this section except as a result of federal funds received within substantially the same period and allocated or allocable to secondary education.	
2-A. Limitation on eligibility.	

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3. Eligibility for discretionary funds. The Passamaquoddy Tribe and the Penobscot Nation shall be eligible to apply for any discretionary state grants or loans to the same extent and subject to the same eligibility requirements, including availability of funds, applicable to municipalities in the State.	
4. Eligibility of individuals for state funds. Residents of either Indian territory shall be eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State, provided, however, that in computing the extent to which any person is entitled to receive any such funds, any moneys received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State, shall be deducted in computing any payment to be made by the State.	
30 § 6212. Maine Indian Tribal-State Commission	
1. Commission created. The Maine Indian Tribal-State Commission is established. The commission consists of 9 members, 4 to be appointed by the Governor, subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 to be appointed by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation and a chair, to be selected in accordance with subsection 2. The members of the commission, other than the chair, each	

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serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of a member, the appointing authority may fill the vacancy for the unexpired term.	
2. Chair. The commission, by a majority vote of its 8 members, shall select an individual who is a resident of the State to act as chair. When 8 members of the commission by majority vote are unable to select a chair within 120 days of the first meeting of the commission, the Governor, after consulting with the governors of the Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. In the event of the death, resignation or disability of the chair, the commission may select, by a majority vote of its 8 remaining members, a new chair. When the commission is unable to select a chair within 120 days of the death, resignation or disability, the Governor, after consulting with the governors of the Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. The chair is a full-voting member of the commission and, except when appointed for an interim term, shall serve for 4 years.	
3. Responsibilities. In addition to the responsibilities set forth in this Act, the commission shall continually review the effectiveness of this Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State and shall	3 A. Responsibilities. In addition to the responsibilities set forth in this Act, the commission shall continually review the effectiveness of this Act and the social, economic and legal relationship between the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet, and

CURRENT LAW	PROPOSAL
make such reports and recommendations to the Legislature, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate.	the Aroostook Band of Micmac Indians and the State and shall make such reports and recommendations to the Legislature, the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet, and the Aroostook Band of Micmac Indians as it determines appropriate.
	B. Interpretation to the Act. No state court or administrative body shall have jurisdiction over any dispute regarding the interpretation of any provision of the Act or the Micmac Settlement Act (7201 et seq.) unless such dispute has been first submitted to the commission and received a written determination by the commission pursuant to rules established by the commission. The commission's determination shall be admissible as evidence in court.
	C. Dispute resolution. The commission shall have the option to require the parties to any dispute described in subsection 3(b) to submit their dispute to mediation or arbitration prior to issuing a determination,
	D. The Commission will facilitate a comprehensive review of this Act every 5 years. As part of the comprehensive review, a workgroup will be established that includes equal membership from the State, the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet and the Aroostook Band of Micmac.
Seven members constitute a quorum of the commission and a decision or action of the commission is not valid unless 5 members vote in favor of the action or decision.	
4. Personnel, fees, expenses of commissioners. The commission may employ personnel as it considers	

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necessary and desirable in order to effectively discharge its duties and responsibilities. These employees are not subject to state personnel laws or rules.	
The commission members are entitled to receive \$75 per day for their services and to reimbursement for reasonable expenses, including travel.	
5. Interagency cooperation. In order to facilitate the work of the commission, all other agencies of the State shall cooperate with the commission and make available to it without charge information and data relevant to the responsibilities of the commission.	
6. Funding. The commission may receive and accept, from any source, allocations, appropriations, loans, grants and contributions of money or other things of value to be held, used or applied to carry out this chapter, subject to the conditions upon which the loans, grants and contributions may be made, including, but not limited to, appropriations, allocations, loans, grants or gifts from a private source, federal agency or governmental subdivision of the State or its agencies. Notwithstanding Title 5, chapter 149, upon receipt of a written request from the commission, the State Controller shall pay the commission's full state allotment for each fiscal year to meet the estimated annual disbursement requirements of the commission.	
30 § 6213. Approval of prior transfers	
1. Approval of tribal transfers. Any transfer of land or other natural resources located anywhere within the State, from, by, or on behalf of any Indian	

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nation, or tribe or band of Indians including but without limitation any transfer pursuant to any treaty, compact or statute of any state, which transfer occurred prior to the effective date of this Act, shall be deemed to have been made in accordance with the laws of the State.	
2. Approval of certain individual transfers. Any transfer of land or other natural resources located anywhere within the State, from, by or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact or statute of any state, shall be deemed to have been made in accordance with the laws of the State.	
30 § 6214. Tribal school committees	
The Passamaquoddy Tribe and the Penobscot Nation are authorized to create respective tribal school committees, in substitution for the committees heretofore provided for under the laws of the State. Such tribal school committees shall operate under the laws of the State applicable to school administrative units. The presently constituted tribal school committee of the respective tribe or nation shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe or nation creates the tribal school committee authorized by this section.	
	30 § 6215. Federal law Applicability

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	All federal laws shall be applicable to the Maine Tribes, including but not limited to laws written in accordance with P.L. 93-638, and from federal departments such as Environmental Protection Agency, Housing and Urban Development, Health and Human services, Department of Interior, United States Department of Agriculture, Department of Energy, Department of Education, Department of Justice, Department of Defense, Federal Energy Regulation Commission, Department of Commerce, Department of Transportation, United States Commission on Civil Rights, Homeland Security, and other federal agencies.
	Any unresolved disputes applicable to the Maine Tribes within the Act are to be settled by an impartial arbitrator. For any disputes that remain unsettled by arbitration, court action shall be in a Tribal-State Court. The Tribal-State Court shall consist of 3 Tribally appointed judges and 3 State appointed judges. Any appeals will be handled in a federal court.
CHAPTER 603	
MICMAC SETTLEMENT ACT	
30 § 7201. Short title	
(NOTE: Needs ratification by Indian tribes per Secretary of State)	
This Act shall be known and may be cited as "The Micmac Settlement Act."	
30 § 7202. Definitions	
(NOTE: Needs ratification by Indian tribes per Secretary of State)	
As used in this chapter, unless the	

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context otherwise indicates, the following terms have the following meanings.	
1. Aroostook Band of Micmacs. "Aroostook Band of Micmacs" means the sole successor to the Micmac Nation as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Aroostook Band of Micmacs is represented, as of the date of enactment of this subsection, as to lands within the United States by the Aroostook Micmac Council.	
2. Aroostook Band Trust Land. "Aroostook Band Trust Land" means land or natural resources acquired by the secretary in trust for the Aroostook Band of Micmacs, in compliance with the terms of this Act, with money from the original \$900,000 congressional appropriation and interest thereon deposited in the Land Acquisition Fund established for the Aroostook Band of Micmacs pursuant to federal legislation concerning the Aroostook Band of Micmacs or with proceeds from a taking of Aroostook Band Trust Land for public uses pursuant to the laws of this State or the United States.	2. Aroostook Band Trust Land. "Aroostook Band Trust Land" means land or natural resources acquired by the secretary in trust for the Aroostook Band of Micmacs, in compliance with the terms of the 1991 federal Aroostook Band of Micmacs Settlement Act Pub. L. 102-171, sec. 5, Nov. 26, 1991, 105 Stat. 1143. .
3. Land or other natural resources. "Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including, but without limitation, minerals and mineral rights, timber and timber rights, water and water rights and hunting and fishing rights.	
4. Laws of the State. "Laws of the State" means the Constitution and all	

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statutes, rules or regulations and the common law of the State and its political subdivisions, and subsequent amendments thereto or judicial interpretations thereof.	
5. Secretary. "Secretary" means the Secretary of the Interior of the United States.	
6. Transfer. "Transfer" includes, but is not limited to, any voluntary or involuntary sale, grant, lease, allotment, partition or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or other conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or other natural resources.	
30 § 7203. Laws of the State to apply to Indian Lands	Delete – See 7205 (2)
(NOTE: Needs ratification by Indian tribes per Secretary of State)	
Except as otherwise provided in this Act, the Aroostook Band of Micmacs and all members of the Aroostook Band of Micmacs in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.	Delete
30 § 7204. Acquisition of Aroostook Band Trust Land	<i>Please see Explanation contained in Aroostook Band of Micmac Indians Support for Proposed Revisions to the 1989 Micmac Settlement Act December 5, 2007 for §7204</i>

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	Delete
(NOTE: Needs ratification by Indian tribes per Secretary of State)	
1. Approval. The State of Maine approves the acquisition by the secretary of Aroostook Band Trust Land within the State of Maine provided as follows.	Delete
A. No land or natural resources acquired by the secretary may have the status of Aroostook Band Trust Land, or be deemed to be land or natural resources held in trust by the United States, until the secretary files with the Maine Secretary of State a certified copy of the deed, contract or other instrument of conveyance, setting forth the location and boundaries of the land or natural resources so acquired. Filing by mail shall be complete upon mailing.	Delete
B. No land or natural resources may be acquired by the secretary for the Aroostook Band of Micmacs until the secretary files with the Maine Secretary of State a certified copy of the instrument creating the trust described in section 7207, together with a letter stating that the secretary holds not less than \$50,000 in a trust account for the payment of obligations of the Aroostook Band of Micmacs, and a copy of the claim filing procedures the secretary has adopted.	Delete
C. No land or natural resources located within any city, town, village or plantation may be acquired by the secretary for the	Delete

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Aroostook Band of Micmacs without the approval of the legislative body of the city, town, village or plantation.	
2. Takings for public uses. Aroostook Band Trust Land may be taken for public uses in accordance with the laws of the State to the same extent as privately owned land. The proceeds from any such taking shall be deposited in the Land Acquisition Fund. The United States shall be a necessary party to any such condemnation proceeding. After exhausting all state administrative remedies, the United States shall have an absolute right to remove any action commenced in the courts of this State to a United States court of competent jurisdiction.	Delete
3. Restraints on alienation. Any transfer of Aroostook Band Trust Land shall be void ab initio and without any validity in law or equity, except:	Delete
A. Takings for public uses pursuant to the laws of this State;	Delete
B. Takings for public uses pursuant to the laws of the United States;	Delete
C. Transfers of individual use assignments from one member of the Aroostook Band of Micmacs to another band member;	Delete
D. Transfers authorized by federal law ratifying and approving this Act; and	Delete
E. Transfers made pursuant to a special act of Congress.	Delete

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If the fee to the Aroostook Band Trust Land is lawfully transferred to any person or entity, the land so transferred shall cease to have the status of Aroostook Band Trust Land.	Delete
30 § 7205. Powers of the Aroostook Band of Micmacs	
(NOTE: Needs ratification by Indian tribes per Secretary of State)	(Please see Explanation contained in Aroostook Band of Micmac Indians Support for Proposed Revisions to the 1989 Micmac Settlement Act December 5, 2007 for §7205)
The Aroostook Band of Micmacs shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.	1. Powers, privileges and immunities. The Aroostook Band of Micmacs shall exercise the following powers, privileges and immunities.
	A. The governing body of the Band has the right to enact legislation to govern the Band and protect its common welfare for matters relating to the Band's internal and local affairs, as well as the ways and means of financing its self-governing functions, including but not limited to, the following.
	(1) The Band has the right to determine the membership of the Tribe.
	(2) The Band has the right to determine the form of its government, the right to determine who is eligible to vote, who is eligible to run for office and the manner of the elections.

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	(3) The Band has the right to control its domestic relations.
	(4) The Band has the right to control, maintain and protect its culture and traditions
	(5) The Band has the right to control, maintain, protect and regulate the Aroostook Band Trust Land.
	(6) The Band has the right maintain law on order and administer justice on the Aroostook Band Trust Land.
	<p>a. The jurisdiction of the Band's court shall be the same as that of the Penobscot and the Passamaquoddy court's found at 30 M.R.S.A 6209. (A) and (B) (1),(2),(3) and (4).</p>
	<p>b. Law enforcement officers appointed by the Micmac Band shall have exclusive authority to enforce, within Aroostook Band Trust Lands, ordinances adopted under subsection 1 and to enforce, on their Trust lands, the criminal, juvenile, civil and domestic relations laws</p>

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	over which the Micmac Band has jurisdiction under subsection 1(6)(a).
	(7) The Band has the right to control, maintain and regulate economic development and commerce on Aroostook Band Trust lands, except that gaming activities shall continue to be governed by State law.
	(8) The Band has the right to control Tribal government employment.
	(9) The Band has the right to control and regulate taxation on Aroostook Band Trust Land.
	B. The Band, its officers and employees are immune from suit when the Band is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.
	2. Application of State laws. State laws and rules apply to the Band, except that a State law or rule that affects or preempts the Band's right to self government as set forth in subsection 1 above shall apply to the Band.
	A. Any State law or rule that is determined to be applicable to the Aroostook Band of Micmacs, its lands, or members shall be considered a minimum requirement

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	and the Band may apply a stricter or broader requirement, at its discretion.
	B. State agencies and the Band may enter into agreements to address the application of State laws and rules to the Band and to address conflicts before or as they arise.
	3. State Consultation with the Band. State agencies shall provide for a timely and meaningful consultation with the Band before proposing, adopting or implementing legislation or administrative measures that may materially affect the Band.
	4. Interpretation. The rights of the Band set forth in Section 1 must be construed in a manner that protects that Band's right to self determination and in accordance with federal law.
30 § 7206. Taxation	
(NOTE: Needs ratification by Indian tribes per Secretary of State)	(Please see Explanation contained in Aroostook Band of Micmac Indians Support for Proposed Revisions to the 1989 Micmac Settlement Act December 5, 2007 for §7206)
1. Property taxes. The Aroostook Band of Micmacs shall make payments in lieu of taxes on Aroostook Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource.	Notwithstanding any other provision of law, the payment of all State taxes by the Aroostook Band of Micmac Indians shall be governed by the federal statute known as the Aroostook Band of Micmacs Settlement Act, Pub. L. 102-171, sec. 5, Nov. 26, 1991, 105 Stat. 1143 and applicable federal law.

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30 § 7207. Aroostook Band Tax Fund	
(NOTE: Needs ratification by Indian tribes per Secretary of State)	
1. Fund. The satisfaction of obligations, described in section 7206, owed to a governmental entity by the Aroostook Band of Micmacs shall be assured by a trust fund to be known as the Aroostook Band Tax Fund. The secretary shall administer the fund in accordance with reasonable and prudent trust management standards. The initial principal of the fund shall be not less than \$50,000. The principal shall be formed with money transferred from the Land Acquisition Fund established for the Aroostook Band of Micmacs pursuant to federal legislation concerning the Aroostook Band of Micmacs. Any interest earned by the Aroostook Band Tax Fund shall be added to the principal as it accrues and that interest shall be exempt from taxation. The secretary shall maintain a permanent reserve of \$25,000 at all times and that reserve shall not be made available for the payment of claims. The interest earned by the reserved funds shall also be added to the principal available for the payment of obligations.	Delete
2. Claims. The secretary shall pay from the fund all valid claims for taxes, payments in lieu of property taxes and fees, together with any interest and penalties thereon, for which the Aroostook Band of Micmacs is liable pursuant to section 7206, provided that such obligation is final and not subject to further direct administrative or judicial review under the laws of the State. No payment of a valid claim may be satisfied with money from the fund unless the	Delete

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secretary finds, as a result of the secretary's own inquiry, that no other source of funds controlled by the secretary is available to satisfy the obligation. The secretary shall adopt written procedures, consistent with this section, governing the filing and payment of claims after consultation with the Commissioner of Finance and the Commissioner of Administration and the Aroostook Band of Micmacs.	
3. Distributions. If the unencumbered principal available for the payment of claims exceeds the sum of \$50,000, the secretary shall, except for good cause shown, provide for the transfer of such excess principal to the Aroostook Band of Micmacs. The secretary shall give 30 days' written notice to the Commissioner of Finance and the Commissioner of Administration of a proposed transfer of excess principal to the Aroostook Band of Micmacs. Any distribution of excess principal to the Aroostook Band of Micmacs shall be exempt from taxation.	Delete
4. Other remedies. The existence of the Aroostook Band Tax Fund as a source for the payment of the obligations of the Aroostook Band of Micmacs shall not abrogate any other remedy available to a governmental entity for the collection of taxes, payments in lieu of taxes and fees, together with any interest or penalty thereon.	Delete
	30 § 7208 Sustenance Moose Hunting Mic Mac Band
	<i>Please see Explanation contained in Aroostook Band of Micmac Indians Support for Proposed Revisions to the 1989 Micmac Settlement Act , December 5, 2007</i>

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	<p>A) Notwithstanding any other law of the State, until such time as the Aroostook Band of Micmac Indians acquire trust lands sufficient to support the hunting of moose, the State of Maine shall allow the taking of one moose per Micmac household, from any location where the hunting of such game is allowed.</p>
	<p>B) If the Commissioner of Inland Fisheries and Wildlife, at any time, has reasonable grounds to believe that the right provided in this subsection is adversely affecting or is likely to adversely affect the stock of moose within the State, the commissioner may adopt remedial measures in consultation with the Micmac Band using the same process found in 30 M.R.S.A 6207 (6).</p>
	<p>C) Transportation of game. The moose lawfully taken in accordance with this subsection 7208 may be transported within the State.</p>

Appendix 9

+ The Tribes of Maine +
“The Wabanaki”
January 2008

Maliseet, Micmac, Passamaquoddy and Penobscot
are the oldest continuous governments in the world,
retaining all the rites, ancient ceremonies, traditions, powers,
and,
god-given rights equal to that of any government or sovereign.

- "Each Tribe's inherent right to protect and practice their customary and spiritual traditions shall be recognized and honored by the state."
- The Tribes of Maine are the basis of history and the foundation of not only the Northeastern United States and Eastern Canada but that of the United States and North America.
- The early Tribal governmental relations with France evolved into a remarkable acceptance, mutual respect of each other, French and Indian.
- In America, Sovereignty of Tribes was first recognized by the Vatican in the Sic Dilexit in 1537 and later in 1610 in the Vatican Concordant entered into at Port Royale. These being the first North and South American sovereignty agreements between Governments.
- An accurate accounting of the Tribes' many sacrifices given to this great country, include the results of the Revolutionary War as determined by the colonists joining the Wabanaki Tribes against England.
- George Washington and Colonel Allen made promises to the Tribes that have never been upheld by this Country, as the suppression of Indian Tribes began.
- In 1970 in regard to ceded treaty lands, U. S. Presidential Special Message on Indian Affairs summarized some of the obligations as, "The United States Government has agreed to provide community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans." Maine Tribes never received those services until after 1980.
- In December 1974 the United States Commission on Civil Rights, Maine Advisory Committee, Chaired by Honorable Harvey Johnson after hearings throughout Maine created their 108 page report, titled, " FEDERAL AND STATE SERVICES AND THE MAINE INDIAN." Remember, Maine Indians didn't get the right to vote until 1967.
- The United States has a trust relationship to the highest degree of trust fiduciary responsibility in protecting all federally recognized sovereign Tribal governments including the Maine Tribes, evolving from Treaties, the Constitution, Court decisions and Statutes.
- In the late 1960's the catholic newspaper "The Church World" was the only Maine news media that printed the Maine Indian Treaties and scope of the Tribal land ownership in the State, no other media entity would print or air this historical event.

- Harvard's Prof. Archibald Cox under Constitutional Law, Presidential appointee Judge Gunther, and later Judge Gignoux, all credible jurists, stated the case was credible and the Federal Court decision reflected this review and decision.
- The Settlement Acts, the federal and the state, is an agreement between three sovereigns, under international treaty law, Treaty progression and the foundation of Indian Law, identifies the Tribe-the United States-State of Maine, a governmental hierarchy based on the sovereign's age.
- "This Act was to protect the Maine Tribes from what has happen in the past, would never happen again."
- The United States Trust Fiduciary Responsibility to the highest degree of trust; cannot be transferred to any other entity including the State of Maine.
- Since the 1980 Settlement Act passed -thousands of legislative statutes has been passed by Congress and the State.
- These statutes, laws, regulations, and policies, directly and indirectly being enforced on the Maine Tribes, are actual amendments to the Settlement Acts without concurrence or acceptance by the Tribes.
- Beneficial Acts appear to not apply, where restrictive Acts do apply. This imbalance has caused much hardship on Tribe-United States-Maine governmental relations.
- Maine's assumption of jurisdiction over Tribal governments utilizing any vehicle, as municipal or State laws apply, is an assumption of certain aspects of the Tribe-United States Trust Responsibility of which only the United States oversees and enforces the protection of Federally Recognized Sovereign Tribes.
- At the time of acceptance of the Maine Implementing Act by the Tribes, all Maine laws applying to the Tribes were repealed except certain program laws regarding benefits of housing, education, revenue sharing, and ability to sell bonds; to allow the Tribes the full benefits of federal and state program resources; to be able to sell bonds; and, to have Indian Territory complete control by the Tribe(s) as "Home Rule".
- "Home Rule," as a municipality but not a town or city, the State did not know what a Tribal Government was and used the municipal language for home rule (Patterson).
- The Tribes never ceded its sovereignty nor jurisdiction or enforcement thereof. The jurisdiction of the Maine Tribes is linked directly to the U.S. Major Crimes Act, and 25 CFR, having unlimited civil jurisdiction and limited criminal jurisdiction of up to one year prison terms and \$5000 fine similar to all other Tribes throughout the United States as set by Congress.
- The Tribal Courts have full "Faith and Credit" throughout the United States and its Territories.
- Governmental employees under PL 93-638 are considered Tribal employees, however all regulations, conditions and constraints as federal employees apply to the Tribes and

employees in carrying out these same services, programs, enforcement and other domestic activities as throughout Indian Country.

- The narrow interpretation(s) of the Act over 27 years has corrupted the agreement to such an extent that Maine Tribes have become victims of the State and Courts defining and redefining, “What a Tribe in Maine is, its quality of life, and, its future.”
- State Courts are part of the State governmental system, Tribal Courts are part of the Tribal governmental system, and, decisions reflect that governmental linkage: Would the State agree to have the forum for judicial review be within the Tribal Court system?
- “This will never happen again.”
- In complete disregard to the federal Act; the Trust responsibilities of the United States; and, the Tribal protection from Maine’s historical oppression of the Tribes, is now re-occurring which we see as returning back to the Indian Agent days, the pre-settlement era.
- Tribal Governments have the same attributes and responsibilities as any other government be it federal or state, in the care and protection of its members and families, and its lands, environment, social welfare, education, overall health, spiritual, political and quasi-governmental relations.
- The Maine Tribes are now at a critical stage, necessary and significant changes need to be made to the Maine Implementing Act. These proposed changes are based on the last 27 years of drifting backwards to, “What has happened in the past.”
- The original 1980’s State and Tribal Negotiators have been repeatedly saying the Settlement Act was not meant to be what it has turned out to be.
- This Act was to be a Congressional model for all States and Tribes to emulate, Tribes and States working together.
- There are 562 Tribes in the United States and 572 Tribal Governments, to date no Tribe has accepted this model.
- To clarify this tripartite agreement amongst the three sovereigns, every person involved must understand we are speaking of Governmental Relations at the highest levels of each Government involved, The Tribes, The United States, and, The State of Maine.
- The Tribes gave up a Multi-Billion dollar law suit and removed a legal cloud over 2/3 of the State of Maine;
 - the State returned the residue of the Indian Trust Fund balance (Proctor Report) of seventy thousand dollars of which funds were unaccounted, having been expended by the State during the depression on State priorities at that time;
 - and,
 - the United States gave eighty two million dollars to buy land back, federal services, protection and all benefits as federal recognized Tribes.
- The changes to the Maine Implementing Act being proposed would not be necessary, had the Trust between the two Governments not been broken.

- The State and the Courts have changed the Act, directly and indirectly. Like the State, the Congress likewise has not been alert to Congressional Acts being passed, adding more and more constraints on the Maine Tribes without looking at the ramifications of their actions on the Maine Tribes.
- Amending the Maine Act requires the governmental consent of the Tribes. Likewise judicial decisions impaired the Tribe-United States-State relationships negotiated in 1980.
- We have been told that Acts of Congress do not apply to the Tribes if they affect the civil and criminal jurisdiction of Maine. Beneficial Acts are in question as it appears that Acts that oppress the Tribes apply, however one Act cannot apply while the others don't apply.
- The \$5000/1 yr. Rule determining Tribal civil and criminal jurisdiction must be complied with and applied throughout all decision-making, statutes and resolves. Tribal decisions "Full Faith and Credit" upheld in all judicial systems within the United States and its Territories must be held in full compliance.
- In the late 1980's the Penobscot Nation voted down the Nuclear Repository destined for the tribal lands at Bottle Lake. Penobscot Nation was told they would receive \$100million per year for 10 years if they'd accept the proposed Repository.
- Environmental regulatory jurisdiction is defined as criminal and civil in carrying out the intent and purpose of each respective Act. The Maine Tribes have jurisdiction up to \$5000/1-Year which would qualify the Tribes to maintain up to 90% of all environmental regulatory statutes and related programs.
- After EPA's political decision regarding NPDES and the Tribes disregarding existing policies, regulations, executive orders and statutes, the Tribes were compromised.
- The State took the USEPA and the Tribes to court on the NPDES only to have a narrow reading of all statutes by the Court excepting out that part of the Act that governs the relationship of the Tribes with other governments as well the jurisdictional limitations of \$5000/1yr. set by Congress in 25CFR.
- Remember the Secretary of Interior holds the deeds to all Tribal Lands protecting them from alienation as well as all Trust Natural Resources.
- The State becomes vulnerable in carrying out all Environmental Acts and protecting the Tribes, its members and families within the scope of every environmental Act; and, the Secretary of Interior is to protect the members, families, natural resources and the Tribes from degradation and diminishment as pollution/poisons/toxins and other individual, corporate or governmental impositions.
- The State in assuming the protection of Indian Territory of the Maine Tribes must protect to the highest degree of trust fiduciary responsibility equal to that of the United States in carrying out the environmental protection of the Tribes including the Tribal definitions of environmental quality of all its natural resources, waters, air, plants, soils, all wildlife and fisheries.

- **Corporations polluted and poisoned our lands and waters left the State with extraordinary profits; leaving behind a residue of toxins, poisons and pollution that has caused the death rates of cancer, suppression of immune system and complications, heart, asthma, diabetes, etc.**
- **Our Tribes' average death rate is 47-57 years old, as are our neighboring towns and cities suffering, likewise.**
- **These Corporations in doing business in Maine received enormous benefits and protections from the State at the expense of our natural resources, all our members and all our neighbors.**
- **You might want to see the correspondence and court supporting documents of the State and compare them to the paper companies and industries which reflect a sense of collusion of all participating parties in cases against Indians.**
- **The State beyond that of assuming federal Trust protections must also protect Maine's Indians as being citizens of the State, all Offices and that of the Attorney General Office must be included.**
- **Another example is the complete misunderstanding of, or misappropriation of, and application of the term, "municipality," which originally evolved during negotiations from the AG's Office for them to better understand Tribal Government.**
- **It means, the Tribes ability to exercise governmental "home rule" whereby the term, "municipality" applied within the Act, does not mean a town or city.**
- **"Trust" has been lacking throughout the 27 years. We ask, "What is the State of Maine's Indian Policy? "Who developed this policy?" 'Where is it?"**
- **"Are all Departments of the State including the Legislature, the Courts and the Attorney General's Office aware of this Indian Policy?"**
- **The Maine Indian Tribal State Commission requires the support and respect of all parties in being the first step in easing tensions between the governments and resolving issues and concerns.**
- **Administrative Rule 16B needs to be imposed and made mandatory and accepted by the State Administrative, Legislative and Judicial branches. The Tribes have been working within the scope of MITSC within this system of "In Good Faith" for years and years; only to have the MITSC recommendations be continually ignored and set aside by the State.**
- **The Maine Implementing Act changes proposed comes out of necessity in clarifying our governmental relationships. We cannot continue as we have over these last 27 years.**
- **Economic experience and related studies reflect the sovereignty of Tribes having extraordinary successes of employing thousands of local people laid-off by out-of -State Corporations who made their profits and left the area, leaving behind pollution and unemployed local people.**

- These studies done by the Harvard Business School and others over the years reflect the values of Tribes doing what they have always done, taking care of people, Indian and non-Indian families.
- Tribes nation-wide employ hundreds of thousands of employees within economic ventures and opportunities and satellite supporting industries for members and non-member families.
- Data from the 2000 U.S. Census shows that since 1997 the number of Native American-owned businesses has risen by 84% to 197,300.
- The most significant area of concern is TRUST between the Tribes and the State.
- It is the intent that within this trust, the Tribes pledge to assist the State and local governments in all aspects of human, political, economic, social and governmental responsibilities as other Tribes who are successful in many other states.
- In 2006 and 2007 Governor Baldacci issued a Proclamation honoring and, "Thanking the Wabanaki Tribes" for the care and diligence given in taking care of this wonderful place called, "Maine," and, in 2007 issued an Executive Order creating a Work Group to look into the barriers and impediments of the Maine Implementing Act; and, in 2007, the Legislature created the Tribe-State Work Group to review and make recommendations to the Maine Implementing Act.
- Since the Governor's Proclamation the Tribes have been meeting, deliberating and proposing numerous changes, and only those agree upon have been put forward to the State.
- "Each Tribe's inherent right to protect and practice their customary and spiritual traditions shall be recognized and honored by the state."
- Tax equity is an issue, as Tribal Police, Courts, Game Wardens, Roads, and Governmental Services are not dependent on Maine; the Tribes sustain and maintain all governmental services, however the Tribes are eligible for all State pass-thru federal benefits and services.
- The foundation of our Tribe is completely based on our Tribal spirituality, our decisions likewise reflect this. Our form of government is the most human in caring for people, all people and, "All Our Relations" always.
- The act of settling the land claims amongst the three sovereigns in the form it was proposed and accepted by all parties warrants a third party review be undertaken as in 1974 regarding the 1980 question; " What has happened in the past, will never happen again? "
- Discriminatory practices of the pre-settlement era cannot be re-introduced as returning back to the Indian Agent days in suppressing the Tribes.
- Maine Tribes have always been here. We are not leaving our sacred lands. We love this land more than any other peoples, we have defended her with our life, and, we must all take care of her.

- **We have no other place to go, Maine has always been our home.**

“May GheChe’Nawais be with you, all our families, and “All Our Relations,” always.

This forum, the Tribe-Maine Work Group is the correct forum to begin working in good faith.

T-WG 1-10-8b jgs

Appendix 10

ITEMS FOR POTENTIAL FURTHER DISCUSSION

- JURISDICTIONAL PARITY FOR ALL TRIBES
- MANDATORY, NON-BINDING MEDIATION OF TRIBAL-STATE DISPUTED BEFORE MITSC BEFORE FORMAL LITIGATION CAN COMMENCE
- MANDATORY “MEANINGFUL CONSULTATION” WITH TRIBES PRIOR TO ANY LEGISLATIVE, REGULATORY OR POLICY CHANGE BY THE STATE THAT MAY HAVE AN IMPACT ON THE TRIBES
- MITSC TO CONTINUE STUDYING AND ANALYZING POTENTIAL CHANGES TO THE ACT, AND MAY MAKE FORMAL RECOMMENDATIONS TO AMEND THE ACT TO THE JUDICIARY COMMITTEE EVERY TWO YEARS; RECOMMENDATIONS TO BE PRESENTED TO THE COMMITTEE BY THE GOVERNOR’S OFFICE.
- PROVIDE A LIST OF SPECIFIC STATUTORY AREAS TO BE DEEMED “INTERNAL TRIBAL MATTERS”
- PROVIDE STATEMENT OF INTENT THAT THE DOCUMENT IS ORGANIC, TO BE REGULARLY REVISITED, ETC.

Appendix 11

OMNIBUS TRIBAL SOVEREIGNTY ACT of 2008

Legislative finding and declaration of policy.

The Legislature finds and declares the following:

- a. In 1980 the State enacted the Maine Implementing Act. The Act included an agreement reached with the Passamaquoddy Indian Tribe and the Penobscot Indian Nation that settled a land claim asserted by the Indians.
- b. State and federal courts have since interpreted the language of the Maine Implementing Act as removing the Tribal sovereignty of the Passamaquoddy Indian Tribe and the Penobscot Indian Nation. It was not the intent of the State to remove the Tribal sovereignty of these Tribal governments. While the Maine Implementing Act confers State municipal status upon the Passamaquoddy Indian Tribe and the Penobscot Indian Nation this status was intended to limit, not terminate, the Tribes' own inherent sovereign authorities.
- c. The agreement entered into between the State and Passamaquoddy Indian Tribe and the Penobscot Indian Nation also recognizes the on-going relationship between the Passamaquoddy Indian Tribe and the Penobscot Indian Nation and the federal government and the Maine Implementing Act should not be interpreted to interfere with or terminate that trust relationship.
- d. The Houlton Band of Maliseet Indians in 1980, and the Aroostook Band of Micmacs in 1991 also settled land claims with the State. However, while the State agreed to support federal recognition for both of these Tribes, neither Tribe was provided the same jurisdictional authority over their lands as the Passamaquoddy Indian Tribe and the Penobscot Indian Nation. The Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians have functioning governments and land in trust for the benefit of their members; it is therefore fair and just, pursuant to the authority granted by Congress in 25 USC 1725(e)(2) and Pub. L. 102-171, Stat. 1143. 6(d) to afford both of these Tribes the same jurisdictional settlement provided to the Passamaquoddy Indian Tribe and the Penobscot Indian Nation and to recognize their inherent sovereign authority.
- e. In the 28 years since the enactment of the Maine Implementing Act the Maine Tribes have developed Tribal governments that provide a substantial range of services to thousands of Tribal members. Also during that time considerable State and Tribal resources have been expended in legal disputes over the legal status of the Maine Tribes under the settlement Acts. These disputes have caused a substantial economic and social hardship for the Maine Tribes.
- f. This subchapter represents a good faith effort on the part of legislature to re-evaluate the effectiveness of the Maine Implementing Act and the Micmac Settlement Act and

provide fair and just revisions. Determining the effectiveness of the Maine Implementing Act and the Micmac Settlement Act will require continuous and on-going review. The revisions made to the Settlement Acts in this legislation should not be construed as conclusive of any rights or obligations of either the State or the Tribes.

Purpose. It is the Purpose of this Act to:
To clarify the sovereignty of the Maine Tribal governments.

State Law Shall be Considered a Minimum Standard.

a. State statutory and administrative standards, criteria and regulations determined to be applicable to the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians, shall be considered minimum standards, criteria and regulations. The Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians may enact stricter or broader standards, criteria or regulations.

State Consultation with Tribal Governments Band. State agencies shall provide for a timely and meaningful consultation with the Passamaquoddy Tribe, Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians before proposing, adopting or implementing legislation or administrative measures that may materially affect such Indian Tribe, Nation or Band.

State Laws Not Applicable

In addition to the laws made inapplicable to the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians pursuant to 30 MRSA 6201 et seq and 7201 et seq the following State laws shall also not apply:

FOAA

LURC (The Tribes will put in place their own comprehensive land use plan and implementing ordinances and submit to MITSC. Upon receipt of a plan and ordinances, MITSC will solicit public review and comments, including comments of the Land Use Regulation Commission (LURC).

State Sales Tax on products/services sold by Tribal Government Owned Business' located on Tribal territory or trust land.

State Income Tax on Government Owned Business' located on Tribal territory or trust land.

State taxes on gasoline and diesel sold by Tribal Government Owned Business' located on Tribal territory or trust land.

Tribal Economic Development

The Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians shall be eligible to participate as a matter of right under any State law that allows municipalities to issue tax-exempt municipal bonds.

MAINE INDIAN TRIBAL STATE COMMISSION

30 MRSA 6212 is amended as follows:

3. (a) Responsibilities. In addition to the responsibilities set forth in this Act, the commission:
(i) shall continually review the effectiveness of this Act and the Micmac Settlement Act 30 MRSA 7201 et seq and the social, economic and legal relationship between the Passamaquoddy

Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, the Aroostook Band of Micmac Indians and the State;

- (ii) The commission shall prepare a yearly report along with any recommendations for the Legislature for such amendments or revisions to the Maine Implementing Act and the Micmac Settlement Act the commission deems necessary or appropriate. The commission may submit proposed legislation directly to the Joint Senate Judiciary Committee;
- (iii) The commission shall consider and recommend on a yearly basis whether additional State laws should be added to subsections ## herein; and,
- (iv) The commission shall make such additional reports and recommendations to the Legislature, Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, the Aroostook Band of Micmac Indians as it determines appropriate.

(b) Interpretation of the Acts. No state court or administrative body shall have jurisdiction over any dispute regarding the interpretation of any provision of this Act or the Micmac Settlement Act (7201 et seq.) unless such dispute has been first submitted to the commission and received a written determination by the commission pursuant to rules established by the commission. The commission's determination shall be admissible as evidence in court.

(c) Alternative Dispute Resolution. The commission shall have the authority to require the parties to any dispute described in subsection 3(b) to submit their dispute to Alternative Dispute Resolution. Within one hundred and twenty days (120) days of the effective date of this Act, the commission shall adopt rules covering the Alternative Dispute Resolution Process.

(Need language to add Micmac to MITSC.)

The Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians shall have the same powers, privileges and immunities as the Penobscot and Passamaquoddy.

a. The following provisions of the Maine Implementing Act shall apply to The Houlton Band of Maliseet Indians and the Aroostook Band of Micmac Indians 30 M.R.S.A. 6206, 6207, 6209-A, 6209-B, 6210, 6211 and 6214.

b. The following provisions of the Maine Implementing Act and the Micmac Settlement are hereby repealed: 30 MRSA 6205-A, 6206-A, 6208-A, 7204, 7205, 7206, 7207

Appendix 12

1. Change name of Title 30:

MUNICIPALITIES, AND COUNTIES AND INDIAN TRIBES

2. Jurisdictional parity for all Tribes

	Passamaquoddy Tribe	Penobscot Nation	Houlton Band of Maliseets	Aroostook Band of Micmacs
• Application of laws of the State	§6204 - except as otherwise provided in the Act	§6204 - except as otherwise provided in the Act	§6204 - except as otherwise provided in the Act	§6204 - except as otherwise provided in the Act
• Lands <ul style="list-style-type: none"> • Indian Territory <ul style="list-style-type: none"> ◦ Reservation ◦ Trust Lands • Acquisition, protection from takings • Restraint on alienation 	6205 Sub-§1, ¶A Sub-§1, ¶B, ¶C, ¶D, ¶D-1, ¶E Sub-§§3, 4, 5	6205 Sub-§2, ¶A Sub-§2, ¶B Sub-§§3, 4, 5	§6205-A, sub-§1 Sub-§2 Sub-§3	§7202 (not effective)
• General powers <ul style="list-style-type: none"> • All the rights, privileges, powers and immunities including, without limitation: <ul style="list-style-type: none"> • Enact ordinances • Collect taxes • Subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State • Internal tribal matters not subject 	§6206 Sub-§1 Sub-§1 Sub-§1 Sub-§1	§6206 Sub-§1 Sub-§1 Sub-§1	§6206-A - none without additional enactment	

	Passamaquoddy Tribe	Penobscot Nation	Houlton Band of Maliseets	Aroostook Band of Micmacs
to regulation by the State, including				
• Membership	Sub-§1	Sub-§1		
• The right to reside within Indian Territory	Sub-§1	Sub-§1		
• Tribal organization	Sub-§1	Sub-§1		
• Tribal government	Sub-§1	Sub-§1		
• Tribal elections	Sub-§1	Sub-§1		
• Use and disposition of settlement fund income	Sub-§1	Sub-§1	§6208-A	
• Power to sue and be sued	Sub-§2	Sub-§2		
• Jurisdiction over violations of ordinances by members of either Tribe or Nation	Sub-§3	Sub-§3		
• Law enforcement	§6210	§6210	§6206-B	
• Jurisdiction over fish and wildlife resources	§6207	§6207		
• Ordinances	Sub-§1	Sub-§1		
• Registration stations	Sub-§2	Sub-§2		
• MITSC regulations	Sub-§3	Sub-§3		
• Horsepower and use of motors (not in effect)	Sub-§3-A	Sub-§3-A		
• Sustenance fishing within Indian reservations	Sub-§4	Sub-§4		

	Passamaquoddy Tribe	Penobscot Nation	Houlton Band of Maliseets	Aroostook Band of Micmacs
<ul style="list-style-type: none"> Supervision by Commissioner of Inland Fisheries & Wildlife Transportation of game 	Sub-§6 Sub-§7	Sub-§6 Sub-§7		
• Tribal court jurisdiction	§6209-A	§6209-B	§6206-A - none without additional enactment	
• Eligibility for benefits from the State under any program which provides financial assistance to municipalities	§6211	§6211		
• Membership on Maine State-Tribal Commission	§6212	§6212	LD 373	
• Tribal school committees	§6214	§6214		

3. Mandatory, non-binding mediation of Tribal-State disputes by MITSC before formal litigation can commence

30 MRSA §6212, sub-§7 is enacted to read:

7. Mandatory, non-binding mediation. Before the State may commence litigation against an Indian nation tribe or band, and before an Indian nation, tribe or band may commence litigation against the State, the potential parties must present the dispute to the commission. The commission shall mediate the dispute between the parties. Any resolution resulting from the mediation is not binding on any party. Notwithstanding any law to the contrary, any statute of limitations applicable to the issues included in the dispute is tolled until mediation is completed or terminated.

4. Mandatory meaningful consultation with tribes prior to any legislative, regulatory or policy change by the State that may have an impact on the Tribes

30 MRSA §6215 is enacted to read:

§6215. Legislative, regulatory and policy changes by the State

Every State agency shall provide for a timely and meaningful consultation with each Indian tribe, nation or band before proposing, adopting or implementing legislation or administrative measures that may materially affect the Indian tribe, nation or band.

5. MITSC to continue studying and analyzing potential changes to the Act and may make formal recommendations to amend the Act to the Judiciary Committee every two years; recommendations to be presented to the Committee by the Governor's Office.

30 MRSA §6212, sub-§3 is amended to read:

3. Responsibilities. In addition to the responsibilities set forth in this Act, the commission shall continually review the effectiveness of this Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports a report and recommendations to the Governor, the Legislature, the Passamaquoddy Tribe, and the Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs by January 31st of every other year, beginning in 2009, or more often as it determines appropriate. Recommendations for statutory changes must be submitted to the Governor, who will present the recommendations to the joint standing committee of the Legislature having jurisdiction over judiciary matters.

Seven members constitute a quorum of the commission and a decision or action of the commission is not valid unless 5 members vote in favor of the action or decision.

6. Provide a list of specific statutory areas to be deemed "internal tribal matters"

30 MRSA §6203, sub-§2-B is enacted to read:

2-B. Internal tribal matters. "Internal tribal matters" means the following activities of an Indian nation, tribe or band:

A. Determine membership;

B. Determine who may reside within Reservation and Trust Lands;

C. Determine form of government, who is eligible to vote, who is eligible to run for office and the manner of elections;

- D. Control its domestic relations;
- E. Determine use and disposition of settlement income;
- F. Control, maintain and protect its culture and traditions;
- G. Control, maintain, protect and regulate Reservations and Trust Lands (includes enacting ordinances?);
- H. Maintain law and order and administer justice on Reservations and Trust Lands;
- I. Control tribal government employment; and
- J. Regulation commerce and taxation on Reservations and Trust Lands.

7. Statement of Intent - document is organic, to be regularly revisited, etc.

Part 4: Indian Territories

Chapter 601: Penobscot Nation, Passamaquoddy Tribe and Houlton Band of Maliseet Indians

Chapter 603: Aroostook Band of Micmacs

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Appendix 13

FRAMEWORK FOR DISCUSSION

WABANAKI/STATE OF MAINE LEADERS MEETING

Mutual Freedom, Partnership, and Prosperity:

The Social, Economic and Legal Relationship between

the Wabanaki Tribes and the State of Maine

May 8, 2006

Rationale for meeting

The approach most likely to enhance tribal-state relations consists of honest, open discussions in which each party to the discussions identifies problems in the relationship and recommends solutions after genuinely listening and attempting to understand each other's point of view. Decision makers entering the process must also be willing to use the power of their offices to work for the approval of any recommended changes with their respective governments.

For tribal-state relations to improve, the sovereign leaders must be willing to commit resources, including their personal time and that of appropriate staff, to support the committee work and other collaboration that will lead to concrete results. A safe space must be created in which the genuine issues causing differences between the parties are fully aired. We should recognize an inherent tension at the outset of the process between those who may wish to focus on less controversial issues that may provide opportunities for quicker resolution and others who want to engage in fundamental underlying issues at the core of the relationship. Neither view is exclusively right or wrong. The parties must be willing to allow themselves to trust in the process and in the individuals assigned to facilitate the process in order for the structured dialogue to work.

An assumption is that all the parties recognize the inherent worth of every other party to the deliberations and benefits from the existence and prosperity of the others. Governor Baldacci unequivocally stated his belief on January 23 that Maine is stronger because of the presence of the four Wabanaki Tribes. Though the Wabanaki people pre-existed the State of Maine by thousands of years, they do benefit from a positive government-to-government relationship with the State.

The MITSC Commissioners have identified five suggested topics for discussion after six months of deliberation and input from Tribal and State leaders. Careful consideration must be given to the order in which these issues are discussed. However, the trust and mutual confidence necessary to produce positive concrete results will not last unless there is a genuine willingness to eventually engage in all of the issues as they are identified by Wabanaki and State leaders.

While every Sovereign's issues must be heard and addressed, we cannot tackle every issue. Our challenge is to identify the most important issues. The set of issues may involve

some combination of areas where some collaboration and agreement already exist and areas in which the parties hold strongly divergent points of view.

I. Venue for resolution of disputes

Problem Statement: Two of the sovereigns belonging to MITSC have consistently maintained that resolving disputes between the parties in the courts of the third sovereign, the State of Maine, is inherently unjust. An alternative dispute resolution process that could be independent of the judicial system of the State of Maine ought to be evaluated.

II. Internal Tribal Matters

Problem Statement: The Tribes perceive a steady diminishment of what constitutes Internal Tribal Matters since enactment of the Settlement Act. Many individuals involved in the original Settlement Act negotiations contend that the status of Internal Tribal Matters as it exists today does not reflect the intent of the agreement signed in 1980. The Tribes want to return to their understanding of the original intent of the Settlement Act regarding the scope of their authority.

III. Municipal Language of the Settlement Act

Problem Statement: One of the most contested provisions of the Maine Implementing Act involves the intent providing the Tribes with the powers of municipalities. Tribal negotiators consistently claim this language was introduced to allow the Tribes to seek the same funding opportunities as municipalities (see §6211). State negotiators, fearful of the creation of "a nation within a nation," assert that the municipality language provided comfort to them with a recognizable model subject to control of the State (see §6206 subsection 1 General Powers). Several paper corporations successfully argued that the Tribes are subject to certain responsibilities under the Maine Freedom of Access Act as any Maine municipality (see Great Northern Paper, Inc. et. al. v. Penobscot Nation et. al. (2001)). On February 8, 2001 and May 17, 2002, MITSC publicly expressed its view that the Tribal deliberative process is part of "Tribal Government" and therefore an Internal Tribal Matter not subject to state laws applying to municipalities. From a Tribal perspective, attempting to shoehorn Tribal Governments into a municipal government model is a poor cultural and functional fit. Tribal Governments undertake many functions and possess many powers not applicable to municipalities.

IV. Maliseets, Micmacs relationships with MITSC/State of Maine

Problem Statement: Though part of the Maine Indian Claims Settlement Act, the Maliseets were not granted seats on MITSC. The Micmacs obtained federal recognition at a later time and enjoy a different legal status vis-à-vis the State and Federal Government. Tribal-state relations might benefit from having a formal

structure in which all four Tribes could belong in order to assert concerns and or issues with the State of Maine and vice versa. One way this might be accomplished is including the Maliseets and Micmacs within MITSC. Recommendation #8 of the At Loggerheads report suggests adding Maliseet and Micmac representatives to MITSC. Another approach may be abolishing MITSC as was proposed in LD 1569 and replacing it with a new entity. The Maliseets and Micmacs must decide if they desire such membership.

V. New England intertribal college feasibility study

Problem Statement: The United South and Eastern Tribes, Inc. (USET) and the New England Board of Higher Education (NEBHE) conducted a year-long feasibility study completed late last year examining the potential of creating a Tribal college more conveniently located for the eastern and southern Tribes. Currently, the only Tribal colleges east of the Mississippi River operate in far northern Michigan. The study was funded by the Office of Minority Health in the U.S. Department of Health and Human Services. It examined the feasibility of establishing an intertribal college initially focused on health sciences, technology and pre-medical education that will serve the Tribes located in the USET region. This new institution could include a physical hub campus with numerous satellite-learning centers located on reservations and in urban Indian centers. The potential exists to have the central hub campus located in Maine. The challenge is how do Tribal and State of Maine leaders work together to realize this opportunity.

VI. Next steps

Problem Statement: A necessary prerequisite for the ultimate success of resolving tribal-state disagreements is a commitment from the five Wabanaki leaders and Governor Baldacci to follow-up work after the spring gathering. Clear steps should be outlined before the event ends Saturday so every person in attendance understands what will be done by whom. One of the surest ways to break trust is to argue about the process for change while engaged in making policy changes. Inevitably, someone will think one of the parties is seeking a negotiating advantage when specific process changes are recommended or attempts are made to clarify the process. All the parties would benefit from having a universally understood and accepted process on how Settlement Act changes are made before initiating the process for such changes. Whatever body or bodies that are created to continue the work identified by the governmental leaders should have their members identified, who is responsible for staffing them, desired work product specified, and deadlines agreed upon. Interim progress reports with firm reporting dates should also be outlined. A fall target date should be set for completion of the work with the leaders gathering to review and act on it.

Appendix 14

Minutes for the Tribal-State Work Group Meeting

August 20, 2007 2 – 5 pm

Trustees Conference Room

University of Maine System Office

16 Central Street, Bangor

Tribal-State Work Group members in attendance: Sen. Elizabeth Mitchell, Co-Chair (Senate President Edmonds appointee), Paul Bisulca, Chair, Maine Indian Tribal-State Commission (MITSC appointee), Mike Mahoney (Governor Baldacci appointee), Rep. Joan Nass (Speaker Cummings appointee), Sen. Kevin Raye (Senate President Edmonds appointee), Passamaquoddy Tribal Rep. Donald Soctomah (Passamaquoddy Joint Tribal Council appointee), Rep. Henry Joy (Speaker Cummings appointee), Rep. David Cotta (Speaker Cummings appointee), Rep. Dick Blanchard (Speaker Cummings appointee), Rep. Richard Cleary (Speaker Cummings appointee), Brian Altvater (Chief Phillips-Doyle appointee), Butch Phillips (Chief Francis and Penobscot Tribal Council appointee), Penobscot Tribal Council Member Jim Sappier (Chief Francis and Penobscot Tribal Council appointee), Passamaquoddy Tribal Council Member Elizabeth Neptune (Governor Nicholas appointee), Chief Brenda Commander (Chief Commander appointee)

Observers: Rebecca Sockebeson, Penobscot Nation Tribal Rep. Donna Loring, Peter Sly, Norma Bisulca, Richard Silliboy, Sharri Venno, Mark Chavaree, Wayne Newell, Esther Attean

Minutes recorded by John Dieffenbacher-Krall

University of Maine System Chancellor Richard Pattenauaude welcomed people.

The group reviewed the agenda. No changes were made. Paul Bisulca kicked off the meeting with some background that brought the group to today. He related that the genesis for the Tribal-State Work Group (TSWG) came from the May 8, 2006 Assembly of Governors and Chiefs. Governor Baldacci signed an executive order (19 FY 06/07) to create the TSWG. It met three times during the fall of 2006. The group deliberately moved slowly with people learning to work with one another.

One result from the initial TSWG was the recommendation to incorporate within the orientation for legislators serving in the 123rd Legislature information about the Maine Indian Claims Settlement Act, its companion Maine Implementing Act, and general information on the state of tribal-state relations. This recommendation was implemented in two parts. One, visits to Wabanaki reservations, the Maliseet Reservation in Littleton and Passamaquoddy Reservation at Sipayik, were incorporated during the Maine Development Foundation's January 2007 Legislative Bus Tour. Two, Paul Bisulca, Paul Thibeault, an attorney for the Wabanaki Unit at Pine Tree Legal, and John Dieffenbacher-Krall addressed a joint gathering of the Maine Legislature held January 25, 2007.

Another recommendation of the TSWG was to create two seats for the Houlton Band of Maliseets on the Maine Indian Tribal-State Commission (MITSC) and add two seats for the State of Maine to maintain the tribal-state parity. This recommendation became LD 1263, Resolve, To Continue the Tribal-State Work Group. It passed in June 2007, was signed by Governor Baldacci June 29, was approved by the Maliseets, Passamaquoddy Tribe, and Penobscot Nation, and will take effect September 21, 2007.

Libby Mitchell invited TSWG members to speak. Many gave their recollections of the Settlement Act negotiations and their hopes for the TSWG. Butch Phillips identified the crux of the problem as sovereignty and two Maine Implementing Act (MIA) terms, internal tribal matters and the treatment of Tribes as municipalities. Butch Phillips identified sections 6204 and 6206 of MIA as problematic from a Tribal perspective.

Butch Phillips, a member of the Penobscot Nation Settlement Act negotiating team, elaborated on the Tribal interest in MIA section 6206, subsection 1. Butch Phillips related that the Tribes had two principal problems they wanted to address in this section. One involved funding. Because the State contributed nothing to the eventual settlement, the Tribes wanted them to give something of value. The Tribes decided to ask for the same financial benefits enjoyed by municipalities hence the municipality reference in the section. The second principal concern involved State control of Indian affairs. Butch Phillips held up a copy of the blue book which contained all of the consolidated State of Maine laws governing Indians prior to enactment of the Settlement Act which dissolved the laws. Butch Phillips explained that the Tribes sought the protections afforded under the internal tribal matters language so they could protect the activities most important to an Indian. He explained that the Tribes wanted to avoid anyone ever telling them what to do on their lands.

Libby Mitchell invited the legislative appointees to the TSWG to speak. All of them expressed a similar desire to listen and to understand exactly what the Tribes want to change in MIA.

Libby Mitchell asked the group how should it move forward? Some discussion ensued about whether the most prudent approach might involve taking some baby steps proposing some important yet incremental steps thought more likely to pass or whether a bolder proposal was warranted. A proposal emerged for the Tribal Representatives to the TSWG to refine what they had presented during the meeting in terms of potential changes to MIA. The respective Tribes will have individual Tribal discussion and consultation. The Tribes will then meet collectively to develop a unified position, or at least identify areas they agree upon and identify others that may be the view of a single Tribe. This information will be presented at the next TSWG meeting. Mike Mahoney stated he would be interested in as much documentation as possible of specific examples of how the internal tribal matters and municipality language of MIA has hurt or legally disadvantaged the Tribes. Paul Bisulca said MITSC could help facilitate the collection of that information.

The group agreed that John Dieffenbacher-Krall in his staff capacity to the TSWG would distribute the 1998 paper on tribal sovereignty authored by Mark Chavaree and Jill Shibles' 2000 presentation to the Maine Legislature. As suggested by Wayne Newell, John Dieffenbacher-Krall will also collect and distribute the proposed draft language changes to MIA offered during

a series of MITSC meetings held in 2002-2003. Depending on the date of the next meeting and people's availability, an effort would be made to invite John Patterson, former assistant attorney general who represented the State during the Settlement Act negotiations, Tim Woodcock, former staffperson for US Senator William Cohen, and Wayne Newell, a member of the Passamaquoddy negotiating team in the late 1970s, to share their knowledge with the TSWG.

Appendix 15

Minutes for the Tribal-State Work Group Meeting October 3, 2007 Trustees Conference Room University of Maine System Office 16 Central Street, Bangor

Tribal-State Work Group members in attendance: Sen. Elizabeth Mitchell, Co-Chair (Senate President Edmonds appointee), Rep. Deb Simpson, Co-Chair (House Speaker Cummings appointee), Paul Bisulca, Chair, Maine Indian Tribal-State Commission (MITSC appointee), Mike Mahoney (Governor Baldacci appointee), Rep. Joan Nass (Speaker Cummings appointee), Passamaquoddy Tribal Rep. Donald Soctomah (Passamaquoddy Joint Tribal Council appointee), Rep. Henry Joy (Speaker Cummings appointee), Rep. David Cotta (Speaker Cummings appointee), Rep. Dick Blanchard (Speaker Cummings appointee), Rep. Richard Cleary (Speaker Cummings appointee), Butch Phillips (Chief Francis and Penobscot Tribal Council appointee), Penobscot Tribal Council Member Jim Sappier (Chief Francis and Penobscot Tribal Council appointee), Passamaquoddy Tribal Council Member Elizabeth Neptune (Governor Nicholas appointee), Chief Richard Phillips-Doyle (Chief Phillips-Doyle appointee), Chief Victoria Higgins (Chief Higgins appointee)

Observers: Passamaquoddy Tribal Council Member and MITSC Commissioner Hilda Lewis, Peter Sly, Richard Silliboy, Sharri Venno, Mark Chavaree, Gail Dana-Sacco, Aimee Dolloff, Jerry Reid, John Banks, Maria Girouard, Paul Thibeault, Luke Esty-Kendall, Chief Kirk Francis, Murray Carpenter

Minutes recorded by John Dieffenbacher-Krall

The meeting began with Butch Phillips reading from a prepared statement. (Butch Phillips' remarks were emailed to the entire TSWG on November 7 as a Word file, file name "2007-10-3 Phillips opening statement TSWG.doc".)

Butch Phillips' opening statement was followed by a PowerPoint presentation prepared by the Wabanaki led by Liz Neptune. The PowerPoint presentation is available as file name "2007-10-2 Wabanaki_Presentation[1]."

After the conclusion of the PowerPoint presentation, a number of TSWG members asked questions. Jim Sappier told the group "when we assembled this presentation, I assumed there would be gaps. We anticipated that the gaps would provide an opportunity for Tribal Leaders to fill them in." Reflecting on what the group had just viewed, Jim Sappier detected a profound sense of suppression or oppression. Jim Sappier remarked that at times people may forget the tremendous acts of the Tribes on behalf of the State of Maine. He relayed how the Penobscot Nation rejected a proposal to construct a high-level nuclear waste repository on Penobscot Nation land near Bottle Lake that would have brought the Penobscot Nation annual payments of \$100 million for ten years.

Libby Mitchell noted the importance of internal tribal matters in Butch Phillips' opening statement. Senator Mitchell asked what is it that the Settlement Act has done that makes it even worst for the Tribes in terms of internal tribal matters? Dick Blanchard asked is sovereignty, self-government the key issues you want to fix?

Chief Phillips-Doyle answered our elders have told us the Settlement Act was supposed to enhance sovereignty. That is not what has happened.

Dick Blanchard asked how could the sovereignty be enhanced with a fix? Jim Sappier responded that GheChe'Nawais gave each Tribe its area to take care of and to respect it. The thing that keeps us going is our spiritual cohesiveness. The US has passed a few thousand laws since enactment of the Settlement Act. The State of Maine has passed a comparable amount. The suppressive acts are always claimed to apply to the Tribes but the beneficial acts don't. The Tribes are getting defined by the Attorney General and the State court system.

Libby Mitchell commented referring to Jim Sappier's remarks that he elaborated on sovereignty. Another issue that has arisen is where do legal disputes between the parties get heard. Richard Cleary said in almost all other legal contexts you are required to initially try alternative dispute resolution. It appears in these tribal-state disputes no such alternative dispute mechanism exists.

Butch Phillips said he wanted to respond to Dick Blanchard's question. The two areas that greatly affect the Tribes in the various court decisions are internal tribal matters and municipality status. How does this affect economic development? Tribal Government? Culture? Natural resources? For an Indian Tribe, everything is connected. The decisions and policies we make are dependent on our culture and traditions. How does culture and tradition affect this? The Wabanaki relied entirely before European contact on the natural world for their survival. That is the basis of our culture, traditions, spirituality. No one else has that same connection to the natural world. Our policies are based on that relationship to the natural world. When our Indian leaders can't govern, protect their people's natural resources, the culture suffers. The culture and traditions control everything we do, our personal lives, and our governments. When the Penobscots cannot use the Penobscot River for sacred ceremonies, the culture suffers. The health of the people suffers. When you harm one thing, you harm other things.

Chief Francis stated the Wabanaki Tribes in Maine have not had the same opportunities as most other federally recognized tribes. The issue for us is protecting things that are most important to us. It is not money but our culture, traditions.

Paul Bisulca said he wanted to respond to Richard Cleary's statement regarding raising dispute resolution mechanisms about differences in interpretation connected to internal tribal matters. Where the Settlement Act failed is it did not adequately equip MITSC to singly do what we are doing right now. Look at MITSC's history. Ninety-nine plus percent of the issues presented for MITSC action have been brought by the Tribes. Yet when the Tribes brought the issues and met resistance from the State MITSC was powerless to do anything about it. MITSC was supposed to deal with disputes between the Settlement parties but wasn't empowered to do that.

Sharri Venno raised differences between the Passamaquoddy and Penobscot agreement and the Maliseet situation. Sharri Venno stated MICSA gave us a couple of things. One, it provided federal recognition. Two, it created the ability for the State of Maine and Maliseets to discuss jurisdictional issues. Sharri Venno believes MIA contradicts much of MICSA. She relayed an instance when a State court resolved an internal Maliseet political dispute. Sharri Venno also cited contradictions between MIA and MICSA on taxation issues applicable to the Maliseets. The problems that the Maliseets have faced are not focused on internal tribal matters but more general issues.

Donald Soctomah stated a lot of the legislation that comes up directly affects the Tribes. Much of it also indirectly affects the Tribes. I see classification as municipalities as an easy change. The State needs to recognize Indian Tribes and then let the Tribes define themselves. On the internal tribal matters question, the Tribes should be sovereign in their Tribal Council deliberations. That was a real infringement on each Tribe's culture. (Soctomah was referring to Great Northern Paper et. al. v. Penobscot Nation decided 5/1/01 and Winifred B. French Corporation et. al. v. Pleasant Point Passamaquoddy Reservation decided 5/8/06.) Then there is the water court decision. (Soctomah was referring to State of ME v. Johnson decided 8/8/07.) We need to have a third party rule on it. We now are told we have to get a permit to discharge into our own waters.

Jim Sappier commented this is the seventh meeting (internal Penobscot Nation sessions and meetings with other Wabanaki representatives plus TSWG meetings) I have recently attended dealing with this subject matter. We have discussed three focal points – sovereignty, internal tribal matters, venue. On the venue issue, a possible forum might be the District of Columbia but we are still looking at both the forum question and a possible mediator.

Representative Joy said from what I am hearing there seems to be an incredible disconnect. Everyone thought everything was going to be fine with MIA. It is not. Henry Joy made a connection between restraints placed on the Tribes and the restrictions faced by people living in rural Maine. We have to identify who has the authority to put those roadblocks into place.

Jim Sappier moved, Dick Blanchard seconded to approve the August 20, 2007 minutes as distributed. The motion passed unanimously.

The group set the next meeting for November 2 at a location in Augusta to be determined from 11 – 3. The first hour of the meeting would be dedicated to presentations from John Paterson and Tim Woodcock.

Appendix 16

Minutes for the Tribal-State Work Group Meeting

November 19, 2007

Education and Cultural Affairs Committee Room Room 202, Cross State Office Building, Augusta

Tribal-State Work Group members in attendance: Sen. Elizabeth Mitchell, Co-Chair (Senate President Edmonds appointee), Rep. Deborah Simpson, Co-Chair (House Speaker Cummings appointee), Chief Victoria Higgins (Chief Higgins appointee), Chief Brenda Commander (Chief Commander appointee), Sen. Kevin Raye (Senate President Edmonds appointee), Rep. Joan Nass (Speaker Cummings appointee), Passamaquoddy Tribal Rep. Donald Soctomah (Passamaquoddy Joint Tribal Council appointee), Rep. Henry Joy (Speaker Cummings appointee), Rep. David Cotta (Speaker Cummings appointee), Rep. Dick Blanchard (Speaker Cummings appointee), Rep. Richard Cleary (Speaker Cummings appointee), Butch Phillips (Chief Francis and Penobscot Tribal Council appointee), Penobscot Tribal Council Member Jim Sappier (Chief Francis and Penobscot Tribal Council appointee) Paul Bisulca, Chair, Maine Indian Tribal-State Commission (MITSC appointee), Brian Altvater (Chief Phillips-Doyle appointee)

Observers: Karen Reinert, Peter Sly, Richard Silliboy, Sharri Venno, Gail Dana-Sacco, Jerry Reid, John Banks, Nick Smith, Steve Rowe, Norma Bisulca, AJ Higgins, Stan Meader, Doug Luckerman, John Paterson, Tim Woodcock, Gale Courey Toensing

Minutes recorded by John Dieffenbacher-Krall

The meeting began with an opening invocation by Butch Phillips.

The Chairs then invited guests John Paterson and Tim Woodcock to address the group. John Paterson, a former Maine Deputy Attorney General, served as the principal negotiator for the State of Maine during the Maine Indian Claims Settlement discussions. Tim Woodcock assumed a position on the Senate Select Committee on Indian Affairs in March 1980 just before the Committee received the negotiated Maine Indian Claims Settlement from the Tribes and State of Maine. Near transcripts of their remarks are available in the files 2007-11-21 Toensingjohnpatersontranscript[1] and 2007-11-23 Toensingtimwoodcocktranscript[1].

Maine Attorney General Steve Rowe then addressed the group. Attorney General Rowe declared his office's job is to enforce the law. His office uses traditional rules of statutory construction in interpreting the law. Attorney General Rowe noted that the First Circuit Court of Appeals has developed, in its decisions, a balancing test for use in determining what constitutes "internal tribal matters" under the Maine Implementing Act (MIA), *Akins v. Penobscot Nation*, 130 F.3d 482 (1st Cir, 1997) and *Penobscot Nation v. Fellencer*, 164 F.3d 706 (1st Cir. 1999). Rowe explained that the balancing test factors are (1) the effect on nontribal members; (2) the subject matter of the dispute, particularly when related to Indian lands or harvesting of natural resources on Indian lands; (3) extent to which the matter implicates or impairs the interest of the State; (4)

prior legal understandings with respect to the matter; and (5) nature of position at issue if the case is about employment. Rowe advised the TSWG to keep these First Circuit factors in mind as the TSWG considers possible changes to MIA. Rowe agreed that the MIA can be amended to the extent provided in the Maine Indian Claims Settlement Act which is broad. He encouraged the TSWG to be as specific as possible in proposing any possible amendments to avoid future legal disputes.

Doug Luckerman then presented proposed Maliseet changes to the Maine Implementing Act. At the start of his presentation, two documents were distributed, "Houlton Band of Maliseet Indians Proposed Amendments to Maine Implementing Act November 19, 2007" and "Houlton Band of Maliseet Indians Support for Proposed Revisions to the 1980 Maine Implementing Act (MIA) November 19, 2007."

At the conclusion of Doug Luckerman's presentation, Libby Mitchell asked that any future proposed changes presented to the TSWG be done in standard legislative side-by-side format showing the existing statutory language and proposed change.

Libby Mitchell asked TSWG members if they had any proposed changes to the 10/3 minutes previously distributed to get them to John Dieffenbacher-Krall. In the absence of any changes, the minutes would be considered approved.

The group set the next meeting for December 5 at a location in Augusta to be determined.

Appendix 17

Minutes for the Tribal-State Work Group Meeting December 5, 2007 Criminal Justice Committee Room Room 436, State House, Augusta

Tribal-State Work Group members in attendance: Sen. Elizabeth Mitchell, Co-Chair (Senate President Edmonds appointee), Rep. Deborah Simpson, Co-Chair (House Speaker Cummings appointee), Chief Victoria Higgins (Chief Higgins appointee), Chief Brenda Commander (Chief Commander appointee), Chief Richard Phillips-Doyle (Chief Phillips-Doyle appointee), Sen. Kevin Raye (Senate President Edmonds appointee), Rep. Joan Nass (Speaker Cummings appointee), Passamaquoddy Tribal Rep. Donald Soctomah (Passamaquoddy Joint Tribal Council appointee), Rep. David Cotta (Speaker Cummings appointee), Rep. Dick Blanchard (Speaker Cummings appointee), Rep. Richard Cleary (Speaker Cummings appointee), Butch Phillips (Chief Francis and Penobscot Tribal Council appointee), Penobscot Tribal Council Member Jim Sappier (Chief Francis and Penobscot Tribal Council appointee) Paul Bisulca, Chair, Maine Indian Tribal-State Commission (MITSC appointee), Brian Altvater (Chief Phillips-Doyle appointee), Mike Mahoney (Governor Baldacci appointee)

Observers/Participants: Mark Chavaree, Chief Kirk Francis, Doug Luckerman, Bill Stokes, Sharri Venno, Vicki Wallach

Minutes recorded by John Dieffenbacher-Krall

The meeting began with an opening invocation by Butch Phillips.

Libby Mitchell directed the group's attention to a flipchart at the front of the room. Libby Mitchell announced that she and Deb Simpson had written down three big issues we need to resolve: 1) dispute resolution 2) municipality 3) internal tribal matters. Libby asked the group are these the right issues? After some comments from a few of the TSWG members, the group agreed that Libby Mitchell and Deb Simpson had captured the appropriate issues for consideration.

The group began with the topic of dispute resolution. A Passamaquoddy proposal to have disputes initially submitted to a UN arbitrator followed by the consideration of the US District Court for the District of Columbia if resolution was not reached was considered. Butch Phillips suggested having any dispute go to MITSC first. Donald Soctomah responded with his concurrence that disputes initially go to MITSC followed by the UN if MITSC could not resolve the differences and then the DC court if the UN could not resolve the issue. Mike Mahoney asked is the UN arbitrator already in place? Donald Soctomah answered yes. Libby Mitchell invited people to respond to the Passamaquoddy proposal. She suggested placing the idea for MITSC to initially consider disputes into a subcategory to evaluate its effectiveness.

Mike Mahoney stated he would like a better understanding of MITSC dispute resolution. Donald Soctomah responded that a lot of MITSC opinions had been ignored by the Legislature and courts. Donald Soctomah gave a prime example of the Freedom of Access Act request made by three paper corporations against the Passamaquoddy Tribe and Penobscot Nation. MITSC considered the issue twice both times unanimously stating the Commission's understanding that in the particular situation MITSC felt that the Maine Freedom of Access Act did not apply to the Tribes. Yet despite this unanimous opinion MITSC was ignored.

Paul Bisulca remarked that MITSC does not have the power to compel negotiation. If any party does not wish to participate, negotiation doesn't happen. Dick Blanchard asked does MITSC have the power to convene? Paul Bisulca replied MITSC has the power to hold discussions but not to compel participation. Dick Blanchard asked to remedy that situation, where would that onus be, on the State or the Tribes? Paul Bisulca answered you would need to require the participation of all parties. Mike Mahoney said a parallel provision exists in the Maine Rules of Civil Procedure, 16(b), Pretrial Order and Trial Management Conference. Mike Mahoney explained a mediator has to certify to the court that a good faith effort has been made by the parties to settle prior to allowing the case to go to trial.

Bill Stokes pointed out that disputes don't always involve the Tribes and the State. Situations also occur with third party disputes. Butch Phillips said when we discussed this [referring to pre-MICSA negotiations], we didn't talk about third parties. We were thinking of a government-to-government relationship. In the FOAA case referred to earlier by Donald Soctomah, the State came in as a third party. The State and courts do not recognize us as a government. We want understanding and fairness. Chief Phillips-Doyle advocated that regardless of whether it might be a third party or the State looking for documents, go to arbitration first with it ultimately heard in Federal Court if not resolved. Richard Cleary asked do we have authority to mandate that all litigation be heard in Federal Court? Dispute resolution that precedes litigation can be controlled here.

Paul Bisulca stated that the part that is somewhat broken is the relationship between the governments themselves. What we find is one party or another aligns itself with a third party without consultation between the governments. When the governments are aligned against a third party, that would be a victory.

Kevin Raye commented that I thought Mike Mahoney's suggestion was a good one having a provision analogous to the Maine Civil Rules of Procedure 16(b). As far as removing State courts from third party disputes, I'm uncomfortable with that. We are not trying to bring about a complete rupture of the relationship between the State and the Tribes.

Mark Chavaree stated as our representatives talked about, it's a matter of fairness. Would the State be comfortable having disputes resolved in Tribal court? I have limited experience with mediation. What I have experienced, it is not effective. State court judges don't have a good knowledge of Tribes, Federal Indian law. They tend to apply municipal law. We get lost in that, our identity as Indian Tribes gets lost.

Chief Commander said with a stronger MITSC, mediation and arbitration are important. I don't know if we would want to go to DC for every dispute. Doug Luckerman stated going to any of the courts these days is problematic for the Tribes. The courts have not been friendly to the Tribes. Because of what is happening in the courts, there have to be some signposts for the Tribes that delineate their rights with certainty.

The group next addressed internal tribal matters. Chief Commander began by saying internal tribal matters is not our big issue. It is tribal jurisdiction. Doug Luckerman relayed that his clients originally proposed very general language. At the last TSWG meeting held on November 19, John Paterson and Tim Woodcock explained different powers exist for each Tribe depending on the treaties it made, court decisions, and laws. Upon hearing this, the Maliseets and Micmacs drafted language with two principal objectives. One, to list all the powers needed to function as a sovereign tribe. Two, to specify the powers to achieve the self-government goals of the Maliseets and Micmacs. Doug Luckerman reviewed the proposed Maliseet language of §6206-A.

Mike Mahoney stated it would be helpful to get a sense under the proposed §6206-A, subsections three, four, five, and seven, how the proposed power contrasts with current Maine law. Under subsection five, would the State surrender all environmental regulatory authority? Doug Luckerman answered yes. We would encourage agreements be entered into similar to the foster and adoptive care agreement negotiated by the Maliseets and the Attorney General.

Butch Phillips declared during the land claim negotiation period, the State had tremendous mistrust of the Tribes. The State did not believe that the Tribes could be trusted with self-government, natural resources regulatory authority. We have proven over the last 27 years that we have the knowledge, capability, and demonstrated the responsibility to exercise such power. Look at our land use ordinances. They are as stringent or more protective than the State's. The time has come for the State to give the Tribes the chance and due respect.

Jim Sappier referred to his uncle Harold Polches who said you take a look at the State's fish and wildlife laws, they are identical to Tribal laws. It is interesting that we are talking about laws and questions of trust. Internal tribal matters is home rule. It encompasses all the powers of government governing its people. Deb Simpson asked (of Jim Sappier) do you think what the Maliseets and Micmacs have proposed is of assistance? Jim Sappier answered yes, but we need a few days to review this.

Chief Phillips-Doyle stated the Passamaquoddy/Penobscot language proposes a paradigm shift to move away from the paternalism that has traditionally characterized the relationship. Sovereignty is an inherent right. We don't have to ask for it. Deb Simpson asked is the Passamaquoddy/Penobscot language trying to restore the two Tribes to the same status as other federally recognized tribes? Chief Phillips-Doyle answered yes. Chief Francis reinforced the validity of Maine Tribes seeking the same status as other federally recognized tribes. All these rights and privileges other federally recognized tribes enjoy should apply here in Maine.

Doug Luckerman said he wanted to go back to some differences between the Passamaquoddy Tribe and Penobscot Nation and his clients, the Maliseets and Micmacs. The Maliseets and

Micmacs had no land base resources. The Maliseets and Micmacs have grown since their settlements.

Paul Bisulca said getting back to the two approaches whether one adopts the more specific Maliseet/Micmac approach or move to the more general Passamaquoddy/Penobscot proposal, there has to be a mechanism for the unanticipated. If you go for the itemized list, build in a mechanism for future government-to-government consultation.

Libby Mitchell asked could you give an example of how this new language would allow something now currently prohibited? Chief Francis named gaming. Libby Mitchell asked Bill Stokes would this represent a major change? Bill Stokes replied because of 1st Circuit decision and other court holdings and the construction of the Maine Indian Claims Settlement Act, the Indian Gaming Regulatory Act (Public Law 100-497) doesn't apply. This provision would say that the Passamaquoddies and Penobscots have all the authority of federally recognized tribes.

Jim Sappier told the group that the proposed Penobscot Nation/Passamaquoddy language does not preempt State civil authority. The Tribes already have criminal authority up to the level of a \$5,000 fine or one year imprisonment. Butch Phillips brought the group's attention to the §6204 proposed change. The current language says all State law applies to the Passamaquoddy Tribe and Penobscot Nation except as provided in this act. The Penobscot/Passamaquoddy proposed change reverses that provision. Under the new proposal, only State laws specifically included apply to the Passamaquoddy Tribe and Penobscot Nation.

Libby Mitchell asked how unique is Maine in terms of the relationship of the Tribes to State law? Bill Stokes answered Maine is fairly unique. To answer that question, you need to look at each Tribe and the treaties it has entered into. Doug Luckerman stated the most analogous situation is Public Law-280 (Public Law 83-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360)).

Chief Francis declared that the goal of the new proposed Penobscot/Passamaquoddy paragraph §6206 is to self-govern, to put the process of governing in the Tribal process. Our goal is to self-govern and to make decisions affecting Tribal members on Tribal territories in the best interest of the Penobscot Nation. Libby Mitchell asked if this is adopted, what would be the interaction with State law? Chief Francis responded you would not see a drastic immediate change. Many Penobscot Nation laws mirror or exceed the minimum requirements of State law. Mike Mahoney asked would self-government demand more resources? Is the implementation and infrastructure already in place or is it more setting your own standards? Chief Francis answered we are almost totally dependent on Federal contracts to support governmental services. Mark Chavaree stated we're talking about each government in its own territory. Another thing to take note of is in a municipality there is a large private sector. Tribes own all of the land.

Chief Commander commented it would help the Tribes with their resources to have more authority. There is a great benefit to avoiding litigation that consumes the limited resources of the Tribes. The Maine Settlement Act deters people from partnering with us due to the uncertainty of its provisions.

Chief Phillips-Doyle said that I don't think resources is an issue or much of an issue. We take some State resources now, for example General Assistance. We would give all of that up in exchange for partnering agreements. Under such agreements, the State would provide certain financial resources in exchange for Tribes providing certain agreed-to functions. Chief Phillips-Doyle cited the economic benefits that would be realized by the Tribes and the State if the Tribes could function as federally recognized tribes.

Deb Simpson said she would support the specific type of language proposed by the Maliseets/Micmacs, the 16(b) like procedure for initial dispute resolution, and the State consulting with the Tribes before doing any rulemaking that could affect the Tribes. Chief Francis responded that the 16(b) proposal doesn't address the home court advantage whether real or perceived. The Maliseet language that talks about economic development, self-government invariably means gaming.

Chief Phillips-Doyle said he could go along with the 16(b) process as long as it is not a State process. It is unfortunate gaming was put on the table. This is a lot more than getting around gaming laws. Chief Higgins stated gaming turns another stone. It detracts from the mission that brought us here.

Deb Simpson stated we can have broad language but we need some limitations. Mark Chavaree asked the State Representatives would you be more comfortable instead of the Penobscot/Passamaquoddy language going with something more in line with the Maliseet/Micmac proposal? Joan Nass replied personally, I like everything spelled out. I would have to agree with Representative Simpson that red flags would go up with gambling. David Cotta said the gaming issue became a lightning rod. There has to be a place where disputes get resolved. There is a need for a mediation board with teeth. Dick Blanchard stated as far as changing the sovereignty rulings, I agree with it. I agree gaming is a red flag. Gaming should be open but on the same basis as any private interest that wants to pursue gaming.

Paul Bisulca remarked that under the internal tribal matters language of §6206 the specific examples were given for illustrative purposes. The courts wrongly ruled that the Tribes' powers were limited to those specific examples. The courts turned the municipality understanding upside down.

Butch Phillips declared that the Penobscots are willing to incorporate or talk about the Maliseet/Micmac 6206-A language. Butch Phillips asked the State representatives to the TSWG to propose language dealing with gaming. Chief Commander remarked we get discouraged at times being thwarted at what we are trying to do. That recurring experience of being prevented from doing what we want is why we chose to list the specific powers we need under our proposed §6206-A language. We listed them hoping something will get passed. Deb Simpson stated that is what I was hoping for. The Maliseet language is inclusive of everything. I want to create certainty about the rules so no court can interpret them wrongly.

Kevin Raye said we will find some element in the Legislature resistant to opening up this Act. A strong argument against that position is Congress predelegating the authority to the State and Tribes to make changes. With that said, specificity will work best with the Legislature. I would

like to see the Passamaquoddies and Penobscots have an opportunity to review the Maliseet language. I am supportive of the 16(b) proposal and building in a five year review of the acts. The Passamaquoddy/Penobscot language in their new proposed §6206 language could be incorporated as whereas supportive language.

Mike Mahoney remarked working off the Maliseet §6206-A language as a blueprint, it would be helpful to have examples or definitions of what they mean.

The group set the next meeting for January 4 at a location in Augusta to be determined.

Appendix 18

Minutes for the Tribal-State Work Group Meeting January 11, 2008 Labor Committee Room Room 220, Cross State Office Building, Augusta

Tribal-State Work Group members in attendance: Sen. Elizabeth Mitchell, Co-Chair (Senate President Edmonds appointee), Rep. Deborah Simpson, Co-Chair (House Speaker Cummings appointee), Chief Brenda Commander (Chief Commander appointee), Rep. Joan Nass (Speaker Cummings appointee), Passamaquoddy Councilwoman Elizabeth Neptune (Governor Nicholas appointee), Rep. David Cotta (Speaker Cummings appointee), Rep. Dick Blanchard (Speaker Cummings appointee), Rep. Richard Cleary (Speaker Cummings appointee), Rep. Henry Joy (Speaker Cummings appointee), Butch Phillips (Chief Francis and Penobscot Tribal Council appointee), Penobscot Tribal Council Member Jim Sappier (Chief Francis and Penobscot Tribal Council appointee) Paul Bisulca, Chair, Maine Indian Tribal-State Commission (MITSC appointee), Brian Altvater (Chief Phillips-Doyle appointee), Mike Mahoney (Governor Baldacci appointee)

Observers/Participants: John Banks, Norma Bisulca, Deb Boxer, Kate Brennan, Tom Bulger, Ken Capron, Mark Chavaree, Ben Chin, Gail Dana-Sacco, Aimee Dolloff, Earnest Foust, Chief Kirk Francis, Maria Girouard, Doug Luckerman, James Matlack, Bonnie Newsom, Linda Raymond, Brian Reynolds, Bill Stokes, Paul Thibeault, Sharri Venno, Vicki Wallach

Minutes recorded by John Dieffenbacher-Krall

The meeting began with an opening statement by Paul Bisulca. He stressed the need to emerge from today with a product. Paul Bisulca sees this not as an end, perhaps for the Work Group, but foresees the process continuing. Butch Phillips followed with an opening invocation.

Libby Mitchell asked for a summary of the meetings that had taken place since the last TSWG meeting. Mike Mahoney provided a summary of those meetings. Chief Francis then made some opening remarks.

Chief Commander declared this is a great big change for all of us. Over the past 27 years, our Tribes have changed and grown. These have been educational sessions for all of us. I hope we come out with something beneficial to both parties. I hope there will be a board or some entity to consider future needed changes.

Brian Altvater said I am the only Tribal representative who is not an elected official. I am comfortable with everything that has taken place to date. I support Chief Francis' statement 110%.

Libby Mitchell then called for a review of all the documents distributed at the meeting. The documents distributed at the meeting included "Items for Potential Further Discussion" that was

attached to a five-page document containing legislative language to implement the items on the first page, a further iteration of the Penobscot/Passamaquoddy side-by-side comparison of current law and proposed Tribal changes accompanied by “The Tribes of Maine” providing justification for the proposed Tribal changes, the “Omnibus Tribal Sovereignty Act of 2008” drafted by Douglas Luckerman on behalf of the Aroostook Band of Micmacs and Houlton Band of Maliseet Indians, and “History of MIA Municipality Provision and Intent of Legislature to Create Organic Implementing Act,” also created by Douglas Luckerman.

Jim Sappier then presented the Penobscot/Passamaquoddy proposed changes, a document that is now 68 pages including all four Tribes, Passamaquoddy, Maliseet, Penobscot and Micmac. Jim Sappier explained that the proposed changes are based on information from the May 2006 Assembly of Governors and Chiefs; the MITSC MIA recommendations of 2002-2003; and the document titled “The Tribes of Maine, The Wabanaki,” from the series of meetings held by the Tribal-State Work Group. In proposing these changes, the Tribes adhered to the principles of “Sovereignty-Jurisdiction-Internal Tribal Matters” to guide them and the relationship of the Tribes to Federal Agencies and their respective responsibilities. In addition, the Tribes’ included a tax equity concern which they understand will be taken up through direct discussions with the Governor’s Office and will be considered for possible separate legislation.

During a page by page review, Jim Sappier and Butch Phillips pointed out new changes from the document that was distributed at the TSWG on December 5. Richard Cleary asked if all of the new changes proposed in the Maliseet/Micmac Omnibus Tribal Sovereignty Act of 2008 had been incorporated into the Penobscot/Passamaquoddy proposal. Butch Phillips, Jim Sappier, and Douglas Luckerman answered no.

Jim Sappier directed the group’s attention to 30 MRSA §6208 concerning taxation and tax equity. Jim Sappier explained that the Penobscot Indian Nation had consulted with the Native American Rights Fund (NARF) about other tribes’ relationship to states on the question of taxation. Mark Chavaree told the group that NARF claims the usual situation is anyone who works on an Indian Reservation is not subject to paying that state’s income tax. The second part of the Penobscot proposal addresses sales taxes. The Penobscot Nation is seeking parity with the Passamaquoddy Tribe who several years ago got legislation enacted that is now codified as 36 MRSA §1815.

Paul Bisulca stated for the benefit of some of the legislators who may not have the background, this is an old issue. Paul Bisulca seems to recall past State resistance to non-Tribal members coming on to Tribal lands and not paying sales tax.

Mike Mahoney commented that the proposed Penobscot/Passamaquoddy changes found on pages 53-54 are similar to the proposed changes advanced by Libby Mitchell and Mike Mahoney. Mike Mahoney stated our language is perhaps stronger. We are proposing that proposed changes to MIA have to be voted on by the Maine Legislature. Mike Mahoney said he would support 3C on page 54 of the Penobscot/Passamaquoddy proposal. An analogy was made to the Medical Malpractice Pre-Litigation Screening Panels and other similar type processes already in place in Maine law. Richard Cleary said the downside of that type of screening process is that it can take a long time.

Paul Bisulca asked does this also include amicus briefs in court? I said in a previous meeting that real success will have been achieved when the Attorney General and Tribes' attorneys join together against a third party's position. When third parties sue, I want to cause a government-to-government consultation to occur over the desired policy outcome.

Chief Commander stated that sort of policy would be of most benefit to us. We have had a mixed experience working with our State Legislators. Some of them have wanted to work with us, some of them have not.

Deb Simpson took the group to the Penobscot/Passamaquoddy proposal in §6215 on page 57 proposing the creation of a Tribal-State Court. Butch Phillips explained that the basis for this section is the many court cases in which the rulings have gone against the Tribes. The Attorney General is charged with representing the citizens of Maine but Tribal members are also citizens. We don't feel represented by the Attorney General. Mike Mahoney remarked that I can see some reason for a different process. There is uniqueness in two governments squaring off in court but I have faith in State judges who are sworn to uphold the law. MIA is part of State law. If judges have gone off course, the fault lies with the Legislature and Executive Branch. We need to fix the Act.

The group turned to the document "Items for Potential Further Discussion." Mike Mahoney stated that the State representatives on the TSWG have been conceptually supportive of the first bullet, jurisdictional parity for all Tribes. The next to last item dealing with internal tribal matters is the elephant in the room that we have been dancing around. Instead of broader language advanced by the Tribes, we are proposing an expansion of internal tribal matters.

Richard Cleary made a point about the courts and disputes. I certainly understand that many of the decisions have not been favorable to the Tribes. There are magic words that limit how the courts can interpret the language. There is a lack of understanding of Tribal customs and traditions. Fourteen MRSA §1106 allows courts to appoint referees. This is something to examine as a possible solution.

Deb Simpson said jurisdictional parity on our side is an important goal. Treating all of the Tribes the same is a matter of equity and justice. On point #4 of "Items for Potential Further Discussion," I have seen different MITSC chairs present legislative proposals to the Judiciary Committee without great success. This is an attempt to ensure that the Governor who appoints the State representatives to MITSC supports its proposals.

After breaking for lunch, Libby Mitchell asked Douglas Luckerman to present the Maliseet/Micmac documents. Doug Luckerman relayed how Libby Mitchell had suggested that he read the transcript of the public hearing held at the Augusta Civic Center in 1980 (public hearing of the Joint Select Committee of the Maine Legislature on Indian Land Claims held March 28, 1980) Doug Luckerman commented on the value of doing that. The Omnibus Tribal Sovereignty Act of 2008 is an attempt to bring the two tracks, the State municipality track and the Tribal retained sovereignty track, together. Doug Luckerman proposed taking the legislative intent of the proposal he had drafted and combining it with the legislative proposal advanced by

Deb Simpson. Chief Francis said we are in support of the spirit of what Doug Luckerman is proposing.

Libby Mitchell proposed that the TSWG final report contain all proposed legislative revisions including the Penobscot/Passamaquoddy proposal.

Liz Neptune said in my opinion it is important to go as far as we can in this process. Butch Phillips stated I would agree with the approach being suggested as long as the legislative intent is preserved.

The group began working off of the State/Deb Simpson legislative proposal, previously referenced as the five-page document accompanying "Items for Potential Further Discussion."

On proposal one, changing the title of Title 30 from "Municipalities and Counties" to "Municipalities, Counties and Indian Tribes," Mike Mahoney moved to adopt the change. Dick Blanchard seconded the motion. It passed unanimously.

On proposal two, jurisdictional parity for all Tribes, Richard Cleary moved jurisdictional parity for all Tribes. David Cotta seconded the motion. It passed unanimously.

Proposal three addresses mandatory, non-binding mediation of tribal-state disputes by MITSC before formal litigation can commence. Richard Cleary moved to support the recommendation, Deb Simpson seconded it. Chief Francis raised a question about the sentence, "Any resolution resulting from the mediation is not binding on any party." How does this improve the situation? Paul Bisulca asked would this include amicus filings? Would this keep the State or Tribes from filing amicus briefs? Mike Mahoney replied as written, probably not. It is a good idea to expand it to intervening in a legal dispute. Paul Bisulca said if you feel the need to have even more teeth, MITSC could be empowered to have more recommendation options. Deb Simpson stated if you take a step back, this changes the process. There is no requirement now. Mike Mahoney suggested with the permission of the chairs that some appropriate time limits be inserted to prevent parties from preventing litigation from occurring by endless mediation.

Richard Cleary said I would like to amend my motion to include amicus filings by the State or Tribes being subject to mediation before MITSC with deadlines. Bill Stokes commented that the concern I have is that a court proceeding in the case of potential amicus filings or intervening is already under way. You would need to figure out how the mediation fits with that. My other concern is that the Attorney General is a Constitutional Officer. The Attorney General has to make litigation decisions. Paul Bisulca remarked that thinking about this tar baby thing, back when I was solely working as a Tribal advocate, you often see that trouble is coming. If MITSC had the power to compel the parties to come to the table, that would be desirable. If anytime there is a dispute we had to make a finding, that is something different. Richard Cleary restated his motion requiring mandatory mediation for tribal-state disputes before going to court with deadlines and requiring acting in good faith. The motion passed unanimously.

Jim Sappier moved to adopt the language of suggestion #4, mandatory meaningful consultation with Tribes prior to any legislative, regulatory or policy change by the State that may have an

impact on the Tribes. Deb Simpson seconded the motion. Chief Francis asked who determines when a Tribe may be materially affected. Doug Luckerman responded that at the Federal level, it is determined by the agency that may be taking an action that could affect a Tribe. How materially affected is interpreted varies from agency to agency. Paul Bisulca asserted that the answer is MITSC watches this. I agree with Doug Luckerman that this will work. The TSWG voted unanimously in support of #4.

Dick Blanchard moved for conceptual support for #5, MITSC to continue studying and analyzing potential changes to the Act and may make formal recommendations to amend the Act to the Judiciary Committee every two years; recommendations to be presented to the Committee by the Governor's Office. Henry Joy seconded the motion. Paul Bisulca made the point that as #5 is written the Governor would submit any recommended legislation. I would prefer MITSC having the ability to introduce the legislation. Doug Luckerman raised the issue that at some point the group should vote on the question of adding the Aroostook Band of Micmacs to MITSC. Butch Phillips moved to accept #5 with the exception of the recommendation for statutory changes must be submitted to the Governor, instead, MITSC should have the power to introduce legislation. Dick Blanchard seconded the motion. It passed unanimously.

The group then addressed #6, provide a list of specific statutory areas to be deemed "internal tribal matters." Richard Cleary stated from the beginning of this process this had been the 800 pound gorilla in the room. This Settlement Act was the product of good faith negotiations between the Tribes and the State. Libby Mitchell said I don't want this to be seen as just punting. If there are some of the pieces on the State proposed list of interest to the group, let's discuss them. Deb Simpson remarked I would at least like to see us address the Freedom of Access Act (FOAA). Paul Bisulca agreed fixing FOAA was important. He would agree with Representative Simpson.

Mike Mahoney moved that the Maine Indian Tribes not be subject to FOAA for any purpose. David Cotta seconded the motion. Chief Francis stated that the Penobscot Nation would rather have the FOAA language in the internal tribal matters section of §6206 than the municipality section. The motion passed unanimously.

Liz Neptune declared I don't want our proposal just part of the final TSWG report. I want the Tribal voice to be heard on the other issues that have been raised. Mike Mahoney concurred that would be important to the Governor's Office. Deb Simpson suggested in the report, John Dieffenbacher-Krall would write about all of the issues that have been discussed. As part of the larger report, all of these documents would be included. Deb Simpson said that I think it is important that the disparities in health and life expectancy be highlighted to help create a sense of urgency in the report.

Chief Francis stated I'm appreciative of everyone's effort and the respect that we have been shown. On the taxation issue, perhaps the best route is to introduce separate legislation. Libby Mitchell offered to expedite the vote to accept the Penobscot legislation with the Legislative Council.

Henry Joy moved, Joan Nass seconded, to adopt #7, statement of intent – document is organic, to be regularly revisited, etc including the addition of the Aroostook Band of Micmacs to MITSC. It passed unanimously.

Butch Phillips commented if you read our proposal we mentioned all Federal laws would be applicable to the Tribes. The Bottomley (Bottomley v. Passamaquoddy Tribe) and Dana (State v. Dana) cases said tribal sovereignty survived. Through that negotiation, we gave up some of that sovereignty but we also retained some. The State proposal did not mention these two items: 1) Federal applicability of laws 2) inherent sovereignty

Jim Sappier moved to accept the minutes from 11/19/07 and 12/5/07. Paul Bisulca seconded the motion. It passed unanimously.

Richard Cleary moved that we task the State Executive Branch to invite the Tribes to discuss unresolved issues and sovereignty. Dick Blanchard seconded the motion. It passed unanimously.